



BULKY DOCUMENTS

(Exceeds 300 pages)

Proceeding/Serial No: 91182064

Filed: 06-29-2009

Title: Opposer's First Notice of Reliance

Part 1 of 3



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AS HOLDINGS, INC.)	
)	
Opposer,)	
v.)	Opposition No. 91182064
)	
H&C MILCOR, INC. f/k/a)	
AQUATICO OF TEXAS, INC.)	Serial Number: 76/461,157
)	Mark: Miscellaneous Design:
Applicant.)	(Pipe Boot Product Design)
)	

OPPOSER'S FIRST NOTICE OF RELIANCE

As required by 32 C.F.R. § 2.122 and the Trademark Trial and Appeal Board Manual of Procedure (TBMP) Section 704.02, this Notice of Reliance serves to notify the opposing party, H&C Milcor, Inc., that AS Holdings, Inc. intends to rely on the materials hereunder in support of its case.

Opposer has filed the Deposition of Sean Steimle discovery deposition as a testimonial deposition pursuant to agreement with opposing counsel. A stipulated motion confirming that agreement has been filed with the Board. Because the motion has not yet been granted, as a precaution Opposer also submits simultaneously therewith this Notice of Reliance.

Opposer makes of record the following pages from the discovery Deposition of Sean Steimle.

Pages: 1-4; 6:14 – 35:9; 36:19 – 41:8; 44:24 – 46:5; 51:20-58:7; 60:10 – 69:11;
75:1 – 77:3

Opposer makes of record the following documents made Exhibits at the Sean Steimle deposition.



06-29-2009

Exhibit		Description
Opposer's 1		Second ReNotice of Deposition of Applicant Pursuant to Fed.R.Civ.P. 30(b)(6)
Opposer's 2		Portals Plus Product Catalog
Opposer's 3		Portals Plus Medium Pipe Boot Specification
Opposer's 5		Milcor and Portals Plus Ad from <i>Snips</i> publication dated January 2008; Vol. 77, No. 1
Opposer's 6		Portals Plus Installation Instructions
Opposer's 7		Excerpts from websites for Milcor and Portals Plus
Opposer's 8		Product List from Portals Plus website
Opposer's 9		Portals Plus Pipe Flashings Technical Product Information from website
Opposer's 10		Portals Plus Adapter Rings Technical Product Information from website
Opposer's 11		Drawing and description from application file
Opposer's 12		U.S. Patent No. 4,211,423 Resech for Roof Seal Device
Opposer's 13		Portals Plus Installation Instructions for Pipe Boots

The deposition excerpts of Mr. Steimle and submitted exhibits each support the functional nature of the proposed mark and configuration of the proposed mark for which registration is sought, and the absence of trademark subject matter and/or secondary meaning of the proposed mark.

AS Holdings, Inc.

Dated: June 26, 2009

By

Terence J. Linn

Matthew D. Kendall

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2851 Charlevoix Drive SE, Suite 207

Grand Rapids, Michigan 49546

Attorneys for the Opposer AS Holdings, Inc.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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AS HOLDINGS, INC.)	
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Opposer,)	
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_____)	

CERTIFICATE OF SERVICE AND MAILING

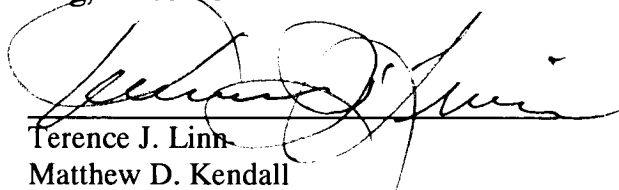
I hereby certify that the enclosed Notice of Filing, Notice of Filing Confidential Documents, Deposition Transcripts, Exhibits, and Opposer's Notice of Reliance in the above-identified Opposition are being deposited with the United States Postal Service as Priority Mail addressed to:

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

on June 26, 2009; and also certify that on June 26, 2009 a true and complete copy of Opposer's Notice of Filing, Notice of Filing Confidential Documents, Deposition Transcripts, Exhibits, and Opposer's Notice of Reliance have been sent by U.S. Priority Mail, postage prepaid to Applicant as follows:

Dillis V. Allen
105 S Roselle Rd, Suite 101
Schaumburg, IL 60193

Dated: June 26, 2009


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Grand Rapids, MI 49546
Attorneys for Opposer

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_____)	

OPPOSER AS HOLDINGS, INC'S NOTICE OF FILING

Opposer AS Holdings, Inc. hereby gives notice that the Opposer is filing the following documents with the Trademark Trial and Appeal Board. Due to the voluminous nature of the documents filed, Opposer is filing these documents by U.S. Priority Mail.

Pursuant to agreement between the parties, these depositions were originally conducted as discovery depositions but may be used by any party as testimonial depositions and treated as if conducted in the respective testimony periods. A stipulated motion confirming that agreement has been filed with the Board.

The Confidential and Confidential-Trade Secret portions are being filed under separate cover submitted herewith.

DEPOSITIONS

Deposition of Sean Steimle – Public and Confidential Transcripts

Deposition of Christopher Carl Kintzele – Public and Confidential Transcript

Deposition of Michael John Hubbard – Public and Confidential-Trade Secret Transcript

OPPOSER'S EXHIBITS FROM THE DEPOSITION OF SEAN STEIMLE

1. Second Renotice of Deposition of Applicant Pursuant to Fed.R.Civ. P. 30(b)(6)
2. Portals Plus Product Catalog
3. Portals Plus Medium Pipe Boot Specification
4. Portals Plus Medium Pipe Boot Specification
5. Milcor and Portals Plus Ad, Snips Publication, January 2008, Vol 77, No. 1
6. Portals Plus Installation Instructions
7. Excerpts from websites for Milcor and Portals Plus
8. Product List from Portal Plus website
9. Portals Plus Pipe Flashings Technical Product Information
10. Portals Plus Adapter Rings Technical Product Information
11. Drawing and description from application file
12. U.S. Patent No. 4,211,423 Resech for Roof Seal Device
13. Portals Plus Installation Instructions for Pipe Boots
14. Hand drawn sketch of left side of pipe boot drawn by Dillis Allen with points A and B added by Terence Linn

APPLICANT'S EXHIBITS FROM THE DEPOSITION OF SEAN STEIMLE

1. Hand drawn sketch of left side of pipe boot drawn by Dillis Allen

OPPOSER'S EXHIBITS FROM THE DEPOSITION OF CHRIS KINTZELE

20. 1 color photograph of 13-inch base pipe boot with "ALPHA SYSTEMS EPDM 1" stamped on base
21. 1 color photograph depicting base of black pipe boot with stamping of "CUT ABOVE RIB"
22. 1 color photograph depicting white pipe boot

23. 1 color photograph depicting black pipe boot with the stamping "BFDP EPDM" on the bottom horizontal ring
24. 1 color photograph depicting small pipe boot with the stamping of "ALPHA SYSTEMS EPDM 2"
25. 1 color photograph of black pipe boot with the stamping on the base of "cut above rib"
26. 1 color photograph of base of black pipe boot with stamping of "CUT ABOVE RIB"
27. 1 color photograph of black pipe boot with the stamping on base "FBPCO"
28. 1 color photograph of black pipe boot with the stamping on base "pipe flashing 1/2-1-1 1/2- 2 1/2 epdm"
29. GenFlex Roofing Systems – 9 pages from website

APPLICANT'S EXHIBITS FROM THE DEPOSITION OF CHRIS KINTZELE

1. Color photograph of physical exhibit - White 13-inch base pipe boot with stamping on base "Alpha Systems EPDM 1"
2. Color photograph of physical exhibit - Black, 13-inch base pipe boot with stamping on base "Alpha Systems EPDM 1"
3. Color photograph of physical exhibit - Black, 9-inch base pipe boot with stamping on base "Alpha Systems EPDM 2"
4. Color photograph of physical exhibit - Black, 13-inch base pipe boot with stamping on the bottom horizontal circumference of "BFDP EPDM"
5. Color photograph of physical exhibit - Black, 9-inch base pipe boot with the stamping of "BFPCO" and "PIPE FLASHING 1/2-1-1 1/2 - 2 1/2, EPDM"
6. 1 – color photograph of pipe boot stamped "PFDP EPDM" on bottom horizontal circumference
7. 1 – color photograph of pipe boot, 13-inch base depicting stamp on base "Alpha Systems EPDM 1"
8. 1 – color photograph of white 13-inch base pipe boot
9. 1 – page, hand drawn document depicting steps on pipe boot, dated 11/12/08, Labeled "Exh A"

10. 1 – page, document labeled as “Exh B”, dated 11 (12 13) 08, hand-drawn diagram depicting steps of pipe boot
11. CONFIDENTIAL-TRADE SECRET – 26 pages, documents from Maple Mold Technologies
12. 52-pages, Portals Plus website printouts
13. 222-pages, United States Patents on various seals for roof vent pipes or similar articles

OPPOSER’S EXHIBITS FROM THE DEPOSITION OF MICHAEL JOHN HUBBARD

29. GenFlex Roofing Systems – 9 pages from website
30. U.S. Patents of Michael J. Hubbard – 18 pages
31. Firestone Technical Information Sheets for pipe boots and flashings (5 pages)
32. Color photograph of physical exhibit Applicant’s No. 4 – depicting with clamp
33. Color photograph of Applicant’s physical Exhibit 4, depicting with clamp
34. Color photograph depicting Applicant’s physical Exhibit 2 with clamp
35. Color photograph of Applicant’s physical Exhibit 2 with clamp
36. Color photograph of Applicant’s physical Exhibit 3, depicting clamp placement
37. Color photograph of Applicant’s physical Exhibits 2 and 3
38. Color photograph of Applicant’s physical Exhibit 4, with clamp placement

APPLICANT’S EXHIBITS FROM THE DEPOSITION OF MICHAEL JOHN HUBBARD

1. Color photograph of physical exhibit - White 13-inch base pipe boot with stamping on base “Alpha Systems EPDM 1”
2. Color photograph of physical exhibit - Black, 13-inch base pipe boot with stamping on base “Alpha Systems EPDM 1”
3. Color photograph of physical exhibit - Black, 9-inch base pipe boot with stamping on base “Alpha Systems EPDM 2”
4. Color photograph of physical exhibit - Black, 13-inch base pipe boot with stamping on the bottom horizontal circumference of “BFDP EPDM”

5. Color photograph of physical exhibit - Black, 9-inch base pipe boot with the stamping of "BFPCO" and "PIPE FLASHING ½-1-1 ½ - 2 ½, EPDM"
9. 1-page, hand-drawn document depicting steps on pipe boot, dated 11-12-08, labeled "Exh A"
10. 1 – page, document labeled as "Exh B", dated 11 (12 13) 08, hand-drawn diagram depicting steps of pipe boot
11. CONFIDENTIAL-TRADE SECRET – 26 pages, documents from Maple Mold Technologies
12. 52-pages, Portals Plus website printouts
14. 21-pages, Portals Plus website printouts
15. 1-page, hand drawing of EPDM, TPO & PVC for GenFlex Mold Types by Mr. Hubbard.

Dated: June 26, 2009

AS Holdings, Inc.

By 

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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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4 AS HOLDINGS, INC.,)

5 Opposer,) Opposition

6 vs.) No. 91182064

7 H&C MILCOR, INC., f/k/a)

8 AQUATICO OF TEXAS, INC.,)

9 Applicant.)

10 The discovery deposition of SEAN STEIMLE,

11 taken in the above-entitled cause, before

12 Suzanne M. O'Driscoll, a notary public of Cook

13 County, Illinois, on the 3rd day of October,

14 2008 at the hour of 11:00 o'clock a.m., at 639

15 North Thomas Drive, Bensenville, Illinois,

16 pursuant to Notice.

17

18

19

20 Reported by: Suzanne M. O'Driscoll

21 License No: 084-002659

22

23

24

25

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I N D E X

2 WITNESS EXAMINATION

3 SEAN STEIMLE

4 By Mr. Linn 6

5 By Mr. Allen 82

6 By Mr. Linn 84

7 E X H I B I T S

8 NUMBER MARKED FOR ID

9 Applicant's Deposition Exhibit

10 No. 1, Second notice of Deposition

11 of Applicant 6

12 No. 2, Portals Plus product catalog 21

13 No. 3, Medium pipe boot 39

14 No. 4, Medium pipe boot 46

15 No. 5, Ad in Snips magazine 53

16 No. 6, Installation Instructions 56

17 No. 7, Website material 60

18 No. 8, Product list 61

19 No. 9, Pipe flashing 63

20 No. 10, Adapter rings 64

21 No. 11, Drawing and description from

22 the application file 66

23 No. 12, Roof seal device patent 75

24 No. 13, Installation instructions 76

25

1 Applicant's Exhibit

2 No. 1, Hand-drawn sketch 82

3 Opposer's Exhibit

4 No. 14, Copy of Applicant's Exhibit

5 No. 1 85

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1 (Whereupon, the witness was
2 duly sworn.)

3 MR. ALLEN: Before we begin, I assume that
4 you're going to be asking him some proprietary
5 questions, and in the interest of brevity, if I
6 say trade secret objection, that means that
7 we're claiming that his testimony falls within
8 the trade secret tier of the Protective Order.

9 MR. LINN: Understood.

10 MR. ALLEN: So I don't have to keep saying
11 what it's about.

12 MR. LINN: That's fine, and we have got a --
13 I'll provide you a copy of the Protective Order.
14 In fact, I will give it to you right now, just
15 so I don't forget, and as I'm sure you're
16 accustomed, when things are designated
17 confidential or a higher level called trade
18 secret confidential, they need to be separately
19 bound. We will go over that, and here is a copy
20 of the Protective Order.

21 Mr. Allen, if possible if you could
22 flag that, what I try to do is try to group all
23 the trade secret stuff together, so we don't
24 have --

25 MR. ALLEN: You mean in your documents?

1 MR. LINN: Well, in the documents, but also
2 in the questioning so that we don't have bits
3 and pieces, and you know, all these little bits
4 and parts that are broken apart as far as a
5 separately bound two pages and then two more
6 pages later on. So if you tell me it's trade
7 secret, what I'm going to try to do is say,
8 okay, we'll put that question on hold, and I'll
9 save it for the end, and I'll ask all the trade
10 secret stuff at the end; but sometimes I can do
11 it, sometimes it's just better to do it right
12 then, and she will separately bind those
13 sections.

14 Why don't you mark that as Opposer's
15 Exhibit 1.

16 (Whereupon, Opposer's Exhibit
17 No. 1 was marked for
18 identification.)

19 SEAN STEIMLE,
20 called as a witness herein, having been first
21 duly sworn, was examined and testified as
22 follows:

23 EXAMINATION

24 BY MR. LINN:

25 Q. I place before you what's been marked

1 as Opposer's Exhibit 1. I will represent that
2 that's a Notice of Deposition that was served in
3 this action. Are you appearing here today to
4 testify in response to this Notice of
5 Deposition?

6 A. Yes.

7 MR. LINN: Just to make sure we got all the
8 housekeeping done, other than possibly an
9 installation instruction, which we may or may
10 not need to go get, are there any other
11 documents that are going to be produced here
12 today or I've got everything that the applicant
13 is producing?

14 MR. ALLEN: No.

15 MR. LINN: No more documents being produced?

16 MR. ALLEN: Right.

17 BY MR. LINN:

18 Q. What's your name?

19 A. Sean Steimle.

20 Q. By whom are you employed?

21 A. Hart & Cooley, Inc.

22 Q. Where is Hart & Cooley, Inc., located?

23 A. Grand Rapids, Michigan.

24 Q. What's your position with that company?

25 A. Vice president.

1 Q. Do you have a particular area or
2 subdivision that you're vice president or just
3 vice president of the whole company?

4 A. Vice president of Commercial Products
5 Group.

6 Q. Could you briefly explain what your job
7 responsibilities are in that vice president
8 position?

9 A. Responsible for sales, marketing and
10 operations of the brands that are under
11 Commercial Products Group.

12 Q. What brands fall under the Commercial
13 Products Group?

14 A. Portals Plus, Roof Products and
15 Systems, Milcor, AMPCO, Ward and recently
16 Selkirk-Metalbestos Commercial and Industrial,
17 Heat Fab.

18 Q. The application that we're dealing with
19 in this opposition proceeding lists its -- the
20 applicant currently as H&C Milcor, Inc. Does
21 your employer have any relationship to that
22 company?

23 A. Yes.

24 Q. And what's that relationship?

25 A. Hart & Cooley, Inc., owns H&C or has

1 responsibility for H&C Milcor.

2 Q. So your testimony here today would it
3 be accurate to say that it's being given on
4 behalf of both Hart & Cooley and H&C Milcor?

5 A. No. H&C Milcor does not have any
6 assets anymore. It's just an entity that has
7 nothing in it anymore.

8 Q. Does -- was this application and all
9 the assets that related to this particular
10 trademark application was that shifted all over
11 into Hart & Cooley?

12 A. Correct.

13 Q. So in terms of dealing with whatever
14 the assets relating to this application, you're
15 going to testify on behalf of Hart & Cooley with
16 regard to those?

17 A. Correct.

18 Q. Now, are the assets that used to be or
19 that made up of H&C Milcor, Inc., do those
20 assets fall under your job responsibility under
21 the Commercial Products Group?

22 A. I'd say yes.

23 Q. Could you give me your educational
24 background, just briefly?

25 A. Sure. I have a business degree,

1 business administration degree, undergrad from
2 Ohio Northern University and a Master's in
3 business from Cleveland State University.

4 Q. When did you receive your Bachelor's
5 degree?

6 A. My Bachelor's degree was received in
7 '99.

8 Q. When did you receive your Master's?

9 A. 2001.

10 Q. Briefly, give us a review of your work
11 history in terms of places you've worked at
12 least since, you know, high school and odd jobs,
13 none of that, just --

14 A. Professional.

15 Q. What I call professional work history.

16 A. From '99 to 2001, I worked for United
17 McGill based out of Columbus, Ohio. I was the
18 sales rep, sales manager, and from 2001 to
19 present, I've been employed by Hart & Cooley in
20 sales manager territory positions, National
21 Sales Manager, and Vice President of Sales and
22 Operations.

23 Q. Can you give me a thumbnail sketch of
24 the history of Hart & Cooley, generally, when it
25 started, high spots in its history that you're

1 aware?

2 A. Hart & Cooley started in 1901. It was
3 acquired by our current holding company, Topkins
4 PLC, in 2000, December of 2000, and probably
5 pretty much status quo since.

6 Q. When did -- was there a relationship
7 formed between your company, Hart & Cooley, and
8 a company that was called Milcor?

9 A. We purchased Milcor, Portals Plus, Roof
10 Products and Systems in January of 2005.

11 Q. Are Milcor and Portals Plus separate
12 companies or just different operating groups?

13 A. At the time of purchase Milcor was, I
14 guess, responsible for Portals Plus and RPS. At
15 this point they're just operating brands.

16 Q. What is the business, just explain,
17 generally, the business of Milcor or the Milcor
18 group?

19 A. Roofing accessories, commercial
20 accessories, roofing commercial accessories to
21 be installed into buildings, commercial
22 buildings.

23 Q. Could you give me some examples of
24 roofing commercial accessories that Milcor would
25 handle?

1 A. Milcor handles roof access hatches,
2 smoke vents, access doors, drywall access doors;
3 and then the other brands handle their own
4 products, if you want me to go into more detail.

5 Q. Yes. Could you tell me what business
6 or products Portals Plus handles?

7 A. Again, roofing accessories, it's a high
8 level, and particular products are flashings
9 made of different materials, membranes, drains,
10 roof drains, roof vents, expansion joints; and
11 obviously, I could keep going.

12 Q. What's an expansion joint?

13 A. In a commercial building, there is
14 usually gaps between an -- in the building for
15 expansion, and this would cover those expansions
16 and allow it to contract and expand during
17 changing of weather conditions.

18 Q. What's a flashing?

19 A. It's in most cases it's a
20 premanufactured product that has consistent
21 specifications and standards that will flash in
22 penetrations.

23 Q. Could you tell us what it is to flash
24 in a penetration?

25 A. To seal a penetration into a roof or a

1 roofing directional change.

2 Q. When you say a roofing penetration,
3 could you explain what those are?

4 A. They can be angle irons, they could be
5 conduit, they could be duct work, they could be
6 skylights, they could be equipment curbs, they
7 could be the drains itself. Those would be
8 typical penetrations.

9 Q. So would it be accurate to say that the
10 flashing makes some sort of water tight or
11 weather-tight seal between whatever the
12 penetrating object is and the roof?

13 A. Yes.

14 Q. And what is the business of RPS?

15 A. It stands for Roof Products and
16 Systems, and it's equipment supports and
17 accessories.

18 Q. What's equipment support?

19 A. Equipment is your Trane, Carrier air
20 conditioning units. We provide metal supports
21 for equipment similar to that and also fan
22 equipment.

23 Q. Could you run through the list of the
24 different flashings that Portals Plus handles?

25 A. Would this be considered proprietary or

1 just go through the products?

2 MR. ALLEN: That's okay. No, it's not.

3 THE WITNESS: Okay. The flashings would be T
4 joints, corner flashings, and pipe flashings.

5 BY MR. LINN:

6 Q. What type of pipe flashing does Portals
7 Plus have?

8 A. We have -- what type of pipes?

9 Q. What type of flashings for pipes?

10 A. I guess I'm confused on that question.
11 That's a product name or what are you --

12 Q. Yes. If you've got -- what you would
13 consider different products, whether they by
14 name or category of product, doesn't matter,
15 whatever types of pipe related flashings.

16 A. The category would be pipe flashing.

17 Q. What is a pipe portal?

18 A. It is a product that has a curb and a
19 rubber flashing.

20 Q. Is it a type of pipe flashing?

21 A. Correct.

22 Q. And is the pipe portal one of the
23 flashings that Portals Plus handles?

24 A. Correct.

25 Q. Does Portals Plus also handle deck

1 mates?

2 A. Yes.

3 Q. What is the deck mate?

4 A. Again, it's in the pipe flashing
5 category, and it's for a particular application
6 that the product being applied to on a roof.

7 Q. What's the particular product?

8 A. Metal.

9 Q. Is there any particular type of metal
10 that it's supposed to be used with, deck mate?

11 A. No, it can be used with various metal
12 types.

13 Q. What would be a typical application for
14 the deck mate product?

15 A. For penetration on a metal roof. I
16 guess you're kind of asking me the same
17 question.

18 Q. All right. We can come back to that.

19 A. Okay.

20 Q. Does Portals Plus handle pipe boots?

21 A. They do.

22 Q. And what is a pipe boot?

23 A. It's a pipe flashing. It's a flashing
24 that seals penetrations.

25 Q. Any particular types of penetrations

1 that a pipe boot seals?

2 A. In most cases, it's a pipe coming
3 through the roof.

4 Q. Is there a difference between a pipe
5 boot and a pipe portal?

6 A. There is.

7 Q. What is the difference?

8 A. Probably I'm not qualified to give you
9 the particulars on that one.

10 Q. But whatever the difference is, at
11 least to Hart & Cooley there is a difference
12 between a pipe portal and a pipe boot?

13 A. There is more components to the pipe
14 portal, and it may serve the same function.
15 Again, to get into the details, I'm probably not
16 qualified to.

17 Q. Does Portals Plus handle an alumi-seal?

18 A. I think you're using the wrong word.
19 No, they don't.

20 Q. Could you just generally explain how a
21 pipe boot works?

22 A. In general terms?

23 Q. Yes.

24 A. It seals the penetration. It's a
25 premanufactured product that has distinct

1 marketing characteristics that seal the pipe and
2 the roofing membrane and not allowing the roof
3 to leak, I guess, is a poor choice of words but.

4 Q. Perhaps it would be easiest just to
5 have you explain how a person would use a pipe
6 boot to seal a pipe penetration?

7 A. Sure. The first step would be to cut
8 the pipe boot to a diameter smaller than the
9 pipe boot -- or the pipe, slide the pipe boot
10 over the pipe, adhere the pipe boot to the
11 membrane and clamp the pipe boot to the pipe to
12 insure the seal.

13 Q. The clamping of the pipe boot to the
14 pipe to insure the seal where is that clamp
15 placed?

16 A. It's placed at the diameter of the
17 pipe.

18 Q. Is it up at the top of the pipe boot?

19 A. Yes.

20 Q. And adhering to the membrane what is
21 this that the pipe boot is being adhered to?

22 A. Depending on the membrane, the
23 different materials of the membrane. The
24 membrane is the roofing material on a roof.

25 Q. So there is a membrane of some sort

1 laid out across the top of the roof?

2 A. Correct.

3 Q. And that is something usually shingles
4 may be placed over or the membrane may itself be
5 on top?

6 A. Either would, probably be never
7 shingles.

8 Q. Okay.

9 A. But it's different types of material.

10 Q. The membrane forms a weather covering
11 for the roof?

12 A. Correct.

13 Q. And then the pipe boot is glued in some
14 way to that membrane on the bottom of the pipe
15 boot?

16 A. Yes.

17 Q. In sliding the pipe boot over the pipe,
18 how do you do that?

19 A. How do you slide the pipe boot over the
20 pipe? You lift the pipe boot up, you slide it
21 over the top, and it will seal as the pipe boot
22 goes down, if you properly cut the boot itself.

23 Q. I'm just trying to get you to in words
24 paint a visual picture, we're using words of how
25 these things are done.

1 A. Okay.

2 Q. And then in terms of cutting the pipe
3 boot to a diameter that's smaller than the pipe,
4 how is that done?

5 A. You would fit the pipe boot over the
6 pipe and where there was tension, you would make
7 your decision to cut.

8 Q. How do you -- how do you know that
9 there is tension, where does this tension come
10 between the pipe boot and the pipe?

11 A. It's more of a field experience from a
12 licensed contractor that installs it, so
13 they've, you know, installed, you know, whether
14 it's a premanufactured product or a field
15 fabricated product, they've done this over
16 several years; and it would be more of an
17 experience to make that decision.

18 Q. Okay. When you cut this to a diameter
19 smaller, how is it that the person can get the
20 diameter to be smaller than the pipe, what are
21 you doing or what are you cutting to make the
22 diameter smaller?

23 A. You would be cutting the tapered boot.

24 Q. What is it about the tapered boot that
25 will generate a smaller diameter that you're

1 cutting?

2 A. The boot is a cone shape, and it goes
3 from a larger point to a smaller point, it fits
4 6-inch to 1-inch pipe, and you would cut the
5 pipe to the size or cut the pipe boot to the
6 size -- a little smaller than the size of the
7 pipe.

8 Q. So the taper has different diameters
9 along its height, let's say?

10 A. Correct.

11 Q. And depending upon where you cut along
12 the taper will give you different diameters?

13 A. Correct.

14 Q. And you select the point on the taper
15 to give you a diameter that you want for that
16 particular pipe?

17 A. Correct.

18 Q. Do you know who invented the very first
19 pipe boot ever?

20 A. Not firsthand. From my understanding
21 through talking to people at the company when we
22 acquired Portals Plus --

23 Q. I don't need some -- well, I'm sorry.
24 I didn't mean to interrupt you.

25 MR. ALLEN: He asked you who made the first

1 pipe boot, not who made the first Portals Plus
2 pipe boot.

3 THE WITNESS: Oh, no.

4 BY MR. LINN:

5 Q. Okay.

6 A. Sorry.

7 Q. Do other companies sell pipe boots
8 other than Portals Plus or Hart & Cooley?

9 A. Yes.

10 Q. Do you have any idea about how many
11 different companies are out there selling pipe
12 boots?

13 A. A handful, and I don't know the exact
14 number. It's probably less than, you know, less
15 than six that I'm aware of.

16 (Whereupon, Opposer's Exhibit
17 No. 2 was marked for
18 identification.)

19 BY MR. LINN:

20 Q. I've placed before you what's been
21 marked as Opposer Exhibit 2. Could you identify
22 that, please, feel free to look through it?

23 A. It is the Portals Plus product catalog.

24 Q. If we can just go through this catalog
25 and figure out what all the different products

1 listed are. If you go to the numbered page 2?

2 A. Um-hmm.

3 Q. It says "Solutions for Roof Leak
4 Problems"?

5 A. This is not a product page.

6 Q. Okay. Going to page 3.

7 A. Um-hmm.

8 Q. Could you explain what that product
9 shown there is?

10 A. It's depicted as a retrofit flashing.

11 Q. Could you explain what that is, just in
12 general terms?

13 A. It's used for a penetration angle iron
14 or other that is preexisting that does not have
15 an opening at the top that you can slide a
16 normal flashing over the top.

17 Q. So it's slotted along the side, the
18 vertical side like a C shape so you can slide it
19 around the pipe?

20 A. Correct.

21 Q. That's for a pipe that's installed so
22 there is no free end that you can fit it over?

23 A. That's correct.

24 Q. Looking at page 4, what's that product?

25 A. The pipe portal system.

1 Q. Explain how that is used?

2 A. It's a flashing that is curb mounted.

3 Q. Okay. What is a curb?

4 A. Excuse me, equipment curb, a support.

5 Typically, it's for equipment, in this case,
6 just for the flashing itself.

7 Q. So just as an example on Exhibit 2,
8 page 4, there is the picture in the -- over at
9 the left-hand side there is some sort of white,
10 I don't know, box with a black cone shaped thing
11 on top of it?

12 A. Um-hmm.

13 Q. Is the whitish box that's the curb --
14 explain what that whitish thing underneath the
15 black cone is?

16 A. That's a cap.

17 Q. And in that particular picture, is the
18 portal, pipe portal, mounted on that cap?

19 A. No, the pipe portal system is that
20 whole component. What is on top of that cap is
21 a flashing, pipe flashing.

22 Q. So the pipe portal includes --

23 A. Those are three different components.

24 Q. All right. It includes the whitish
25 thing with tapered sides at the bottom?

1 A. Yes. There is three separate
2 components, there is actually a fourth, if you
3 include the adapters.

4 Q. Going to page 5, the double pipe portal
5 system. Can you explain that?

6 A. Similar to the previous pipe portal
7 system that has two openings, and it's a larger
8 curb.

9 Q. Okay. Page 6 has equipment rails. Why
10 don't we just skip that one. Page 7 has pipe
11 mounting pedestals, we'll skip that one.

12 Page 8 roof drains. Could you explain
13 what that is?

14 A. On all -- most commercial jobs the
15 process of drainage is through a product called
16 a roof drain.

17 Q. Okay. Go to page 10, there is a
18 parapet/scupper drain, what is that?

19 A. Again, a lot of these are for drainage
20 for the roof. Roof would be sloped towards the
21 product to allow drainage.

22 Q. Okay. Page 12. Keep moving the page.

23 A. Um-hmm.

24 Q. What is that?

25 A. It's depicted as our alumi-flash

1 product, and it's a flashing that has an
2 aluminum base that's secured to the deck.

3 Q. So there is this black -- I'm sorry, on
4 page 12 of Opposer's Exhibit 2 in the sort of
5 over to the left-hand middle there is a picture
6 it says "standard base"?

7 A. Yes.

8 Q. Then there is this black thing on top
9 of what is aluminum and sort of circular object?

10 A. Um-hmm.

11 Q. That whole thing together is the
12 alumi-flash?

13 A. Correct.

14 Q. Page 14, can you explain what that is?

15 A. That is a -- is our flashing for pipes,
16 and it's depicted as the deck-mate because the
17 application that is being applied to a metal
18 deck.

19 Q. I misspoke, you're looking at page 13
20 of Exhibit 2, right?

21 A. I am, yes.

22 Q. That's fine. It was my mistake in the
23 page number.

24 Turning to page 14, can you explain
25 what is at that page?

1 A. It's our various pipe flashings that
2 were on different products in the previous
3 pages.

4 Q. Okay. And what are the pipe flashings
5 that are at page 14?

6 A. Their use is for flashing and
7 penetrations in a roof to premolded product that
8 allows standardized specifications to flash in
9 penetrations and seal.

10 Q. Would it be accurate to call these pipe
11 boots?

12 A. No. They're not all pipe boots.

13 Q. Oh. Are some of them pipe boots?

14 A. Yes.

15 Q. Okay. Which ones are the pipe boots?

16 A. There is one that we call medium pipe
17 boot, large pipe boot and small pipe boot.

18 Q. And what's the other product?

19 A. Quadraseal.

20 Q. And that's not a pipe boot?

21 A. It's a pipe flashing, but it's not
22 depicted as a pipe boot.

23 Q. And what does the quadraseal product
24 do?

25 A. Offers conduit flashing penetrations,

1 multiple penetrations through one pipe flashing.

2 Q. Could you turn to page 15? What's on
3 that page?

4 A. This is premolded corners, and their
5 use is for change in direction on a roof to
6 insure a proper seal to the detail.

7 Q. What's on page 17?

8 A. This is a residential usage product.
9 I'm sorry, I'm on 16. Do you want me to keep
10 going to 17?

11 Q. Yes. Why don't we go to 17.

12 A. 17 is a categorized as vents and
13 breathers. Allows ventilation to the insulation
14 on the roof deck.

15 Q. Let's turn to the front page of Exhibit
16 2, and there is a number of the products shown
17 there, I believe; is that right?

18 A. That's correct.

19 Q. Could you just go through and let's
20 marry up where the -- what the different
21 products shown on the front page are and where
22 they appear on the catalog?

23 A. Upper left-hand side there is a roof
24 drain.

25 Q. That little white thing with a grill.

1 What page does that appear on?

2 A. Page 8. Going from left to right,
3 there is a premolded corner and that is an
4 outside corner and that is depicted on page 15.
5 Again, going left to right to the next object is
6 a scupper drain.

7 Page 10 on inside corner is the next
8 object to the right of the scupper drain and
9 that is going to be on the same page as the
10 previous corner, which is page 15.

11 Going down to the lower half of the
12 page, you're going to have a retrofit flashing
13 and that is on page -- did we see this through
14 here? I don't know if it's depicted in the book
15 per se.

16 Q. Well, let's see if I can help you out
17 here. Look at page 3.

18 A. There you go. Page 3. Thank you.

19 The next product to the right is our
20 alumi-flash product and that's going to be --

21 Q. That's the white bottom with sort of a
22 black top and four pipes coming out of it?

23 A. Correct. Page 12. We do have a -- one
24 of the two, a breather or a vent, that is the
25 next product.

1 Q. That's that sort of white post?

2 A. Correct. And that is going to be on
3 page 17, and then the supports for the equipment
4 that's depicted on the roof are equipment rails,
5 which is going to be on page 6.

6 Q. Those are those white bar-like objects
7 that these boxes are sitting on top of?

8 A. And on page --

9 Q. Is that a yes?

10 A. Yes.

11 Q. The rails are the elongated bar-like
12 white bars that are shown with some sort of
13 boxes on top of them?

14 A. Yes. And the product to the far right,
15 bottom right, is a deck mate brand product,
16 which is on page 13.

17 Q. Now, up in the logo in the upper left
18 corner, do you see where it says Portals Plus?

19 A. Yes.

20 Q. And there is a silhouette of something
21 there?

22 A. Yes.

23 Q. What is that product?

24 A. That appears to be our pipe mounting
25 pedestal or our pipe -- hold on a second.

1 Q. Look at page 4.

2 A. Pipe portal system.

3 Q. Okay. Is that supposed to be your pipe
4 portal system?

5 A. I believe so. This was inherited to
6 us, the literature, from as far back as 1983.

7 Q. Is that logo shown in the upper
8 left-hand corner the logo that your company uses
9 for all of its Portals Plus products?

10 A. Yes.

11 Q. And that logo is used throughout its
12 literature in packaging and other product sales
13 materials?

14 A. Yes.

15 Q. Looking at the pipe boots that appear
16 on page 14 of the catalog?

17 A. Um-hmm.

18 Q. Let's keep that page, we'll probably
19 come back to it, but do the pipe boots that are
20 on page 14 are they shown on the cover of the
21 catalog?

22 A. No.

23 Q. Turning to page 14 in the catalog,
24 there is some discussion at the top, some text
25 and right about the middle and there is -- well,

1 the last three sentences let me just read the
2 first of those last three sentences. "The
3 conically shaped steps of the Portals Plus pipe
4 flashing will securely seal all pipes and the
5 large double thick molded rib at the top of each
6 step offers supreme tear resistance and
7 reenforcement as well as a cutting guide."

8 Could just explain what that means?

9 A. The conical shape is a cone shape, so
10 that allows it to taper from the different
11 diameters to larger diameter pipe to a smaller
12 diameter of pipe.

13 Q. So the conical shape allows the pipe
14 boot to be fitted to different size pipes?

15 A. Correct.

16 Q. Okay.

17 A. Now you're asking me to explain the
18 next pieces of it?

19 Q. Yes. Well, it says --

20 MR. ALLEN: Wait till he asks you a
21 questions.

22 BY MR. LINN:

23 Q. I was asking you about what that
24 sentence means but why don't we break it up.

25 A. Okay.

1 Q. It says, "The conically shaped steps
2 and what are the conically shaped steps?

3 A. The predetermined sizes of the 6
4 through -- or diameters of the pipes.

5 Q. So are the steps targeted to particular
6 standard-size pipes?

7 A. Yeah, they fit particular size pipes.

8 Q. Okay. The conically shaped steps of
9 the Portals Plus pipe flashing will securely
10 seal all pipes.

11 What does that part refer to?

12 A. The securely seal?

13 Q. Yes. How the conically shaped steps of
14 that pipe flashing securely seal all pipes?

15 A. Well, I believe it's kind of a
16 marketing attribute that it's conical, so it
17 tapers down, so whether your pipes go from, for
18 example, one of the pipes go from 6 to 1 inch so
19 you have all the variations in between 6 and
20 1 inch that you can seal your pipe. If you cut
21 your pipe boot to the smaller size of that
22 individual pipe, whatever size it is,
23 five-and-three quarters all the way up to, you
24 know, from 6 inches to 1 inch in that particular
25 case, you'll be able to get a proper seal

1 because there would be a tight fit along that
2 pipe.

3 Q. Okay.

4 A. And then you reassure that with a
5 clamp.

6 Q. Then the sentence says, "and the large
7 double thick molded rib at the top of each step
8 offers supreme tear resistance and
9 reinforcement." What does that refer to?

10 A. Well, the rib is a uniquely identified
11 attribute to the boot to identify the uniqueness
12 of our product.

13 Q. What does this sentence -- my question
14 was "the large double thick molded rib at the
15 top of each step offers supreme tear resistance
16 and reinforcement." What does that refer to?

17 A. The rib provides less ability, from
18 what I'm reading here, it's allowing the product
19 not to tear as easily.

20 Q. That rib is located where the cut is
21 made; is that correct?

22 A. It is along those lines. There is a
23 cutting guide just as similar as if you were in
24 construction and you have a pencil mark that
25 goes across, the operator is to cut along that

1 guide.

2 Q. So this large double thick rib is used
3 as a cutting guide?

4 A. Used as a guide for cutting, correct,
5 if your pipe is that size.

6 Q. To -- and that's when you're cutting to
7 try and size the pipe boot to the particular
8 pipe you're going to use it with?

9 A. If it's applicable, you know, sometimes
10 you're going to be in between that, but if it's
11 applicable, yes.

12 Q. And if you cut along that cutting
13 guide, that that will leave you this large rib
14 right at the cut to act as a reenforcement,
15 correct?

16 A. Not necessarily true. It depends on
17 the size of the pipe and where it's at. You
18 know, like I said, from the marketing
19 information that's in front of me, it serves as
20 a strength device.

21 Q. So if you were to have a size that
22 requires you to cut somewhere along the taper,
23 other than right at the rib, then the rib, you
24 know, the top of it is only to have the regular
25 wall there; is that correct -- I'll withdraw

1 that.

2 If the size of your pipe requires you
3 to cut somewhere else along the angle taper,
4 that's how the boot happens to fit itself to the
5 pipe?

6 A. Right.

7 Q. Then you're just going to have the top,
8 the cut top of the boot there?

9 A. Yes.

10 Q. Now, if you use the rib as a cutting
11 guide and cut along the top of it in those
12 instances, the rib does act as a reenforcement
13 at the top where the cut has been made?

14 A. The rib is really unnecessary.

15 Q. Well --

16 A. From --

17 Q. Let's then go back --

18 MR. ALLEN: Let him finish. Let him finish.

19 BY MR. LINN:

20 Q. Are you done? Don't let me interrupt
21 you, please. Mr. Dillis is correct. I don't
22 mean to talk over you. I thought you were done,
23 but finish your thought.

24 A. The rib itself is not necessary to the
25 function of the pipe boot.

1 Q. In other words, you can cut at a
2 location along the tapered sides?

3 A. Yes.

4 Q. In order to --

5 A. Meet your needs.

6 Q. -- meet your needs?

7 A. Correct.

8 Q. So in those instances, you're not going
9 to be using the rib function?

10 A. Correct. Ideally there is pipe sizes
11 that the ribs fall into; however, there is
12 plenty of pipes or penetration sizes that the
13 rib does not fall into.

14 Q. Right. So there are certain pipes that
15 that rib function really isn't going to be
16 useful for because they're not a size pipe that
17 marries up to the rib?

18 A. That's correct.

19 Q. But the rib sizes target certain stock
20 pipe sizes; is that correct?

21 A. Correct.

22 Q. So when you use the pipe boot for a
23 pipe that's the stock sizes, the rib is put
24 there to give you a cutting guide and a
25 reenforcement when you're doing cutting?

1 A. The rib is only 60 mill or 60
2 durometers, so you can cut right through that
3 rib very easily, so it's just a guide, more or
4 less a guide to cutting.

5 Q. Okay. Then let's go back to what your
6 catalog says.

7 A. Um-hmm.

8 Q. "The large double thick molded rib at
9 the top of each step offers supreme tear
10 resistance and reinforcement."

11 In those instances where you use the
12 rib as a cutting guide and it meets, you know,
13 it's used with a standard stock size pipe, are
14 you saying that that statement in the catalog is
15 not true?

16 A. No, I'm not saying that. I'm not
17 saying it's not true. All I'm saying is this
18 marketing information has been in place since
19 the early '80s, and we've inherited the
20 marketing information, so we've used that
21 marketing information in our literature and just
22 continued the marketing information that's in
23 our catalogs and web sites and everything else.

24 Q. Okay. And I just want to be clear on
25 this.

1 A. I guess from a -- if I can continue?

2 Q. Go ahead.

3 A. From a, you know, design standpoint
4 it's, you know, probably something that if we
5 created this, we probably wouldn't have done,
6 you know, there is more material that's being
7 used with the design that is currently so.

8 Q. But in terms of this catalog and its
9 representation that the large double thick
10 molded rib at the top of each step offers
11 supreme tear resistance and reenforcement, is
12 that true for those instances in which that rib
13 cutting guide function is being used and you cut
14 along the rib in order to marry up with a stock
15 size pipe; is that statement true?

16 MR. ALLEN: Let's take a break here. Can we
17 take a break?

18 MR. LINN: No, not with a question. Let's
19 have the question answered, and then we will
20 take a break.

21 THE WITNESS: Can I review?

22 BY MR. LINN:

23 Q. Yes. Take all the time you need.

24 MR. LINN: Counsel, are you instructing the
25 witness somehow?

1 MR. ALLEN: Yes.

2 THE WITNESS: I mean from the pipe boot
3 standpoint if it's cut at that point, there is
4 additional rubber at that point, so there would
5 be less of an opportunity for tear.

6 MR. LINN: Mr. Dillis, did you want to take a
7 break now?

8 MR. ALLEN: No. He already answered.

9 MR. LINN: Let's mark that.

10 (Whereupon, Opposer's Exhibit
11 No. 3 was marked for
12 identification.)

13 MR. ALLEN: Maybe we will take a break.

14 (Whereupon, a short break was
15 taken.)

16 BY MR. LINN:

17 Q. I am placing before you what's been
18 marked as Opposer's Exhibit 3. Can you identify
19 that, please?

20 A. It's our medium pipe boot, and I
21 believe it's one of our marketing brochures, has
22 the title Technical Product Information.

23 Q. Looking in the upper right corner,
24 there is sort of a line drawing with a bunch of
25 dimensions --

1 A. Um-hmm.

2 Q. -- on it. Do you see it up there?

3 A. Yes.

4 Q. This might make it easier for somebody
5 who tries to read this to figure out that whole
6 discussion of the way the pipe boot works.

7 A. Okay.

8 Q. So perhaps to the extent you need to
9 make a mark or anything here, feel free to do
10 so, but could you just explain what these
11 various parts or pieces to the pipe boot do, how
12 that tapering of the pipe boot is used to fit
13 the boot to different pipes?

14 A. Explain that to you?

15 Q. Yes.

16 A. Okay.

17 Q. Referring to Exhibit 3 picture, if it
18 would help.

19 A. From a marketing standpoint, we have
20 the tapered sections go from, on this particular
21 case, from 6 inch to 1 inch, and it has areas
22 where it tapers in at from a marking standpoint
23 of certain sizes 6 through 1 inch of increments
24 of 1 inch.

25 Q. Now, these different angled parts

1 that's the section you'd cut along in order to
2 marry up with the, let's say, nonstandard sized
3 pipes?

4 A. Correct.

5 Q. And if you're going to marry it up to a
6 standard size pipe, you just cut at the top of
7 one of these angled sides?

8 A. That's correct.

9 Q. And what are these -- the steps for?

10 A. There is really -- the steps are
11 unnecessary. They provide a unique
12 identification from a marketing purpose. We are
13 the only product in the marketplace that appears
14 this way.

15 Q. Well, no other company sells pipe boots
16 with steps on it?

17 A. As far as I'm aware, no.

18 Q. So nobody else has a pipe boot, for
19 instance, that has steps like your retrofit
20 flashing?

21 A. That's correct. From my -- from what
22 I'm aware of.

23 Q. Now, in the -- let's look at page 3 of
24 Exhibit 2, that's your catalog?

25 A. Yes.

1 Q. At the bottom of that there is some
2 line drawing showing the --

3 MR. ALLEN: What was this number on this, was
4 this 3?

5 MR. LINN: That's 3.

6 BY MR. LINN:

7 Q. Now we're looking at the catalog,
8 Exhibit 2, at page 3, bottom?

9 A. Correct.

10 Q. And there is the retrofit?

11 A. Yes.

12 Q. And those have steps?

13 A. Um-hmm.

14 Q. And those steps in this instance don't
15 have a range, they just have set numbers; do you
16 see that?

17 A. Yes, I do. 5 through 3 inch.

18 Q. Do you know why that is?

19 A. No.

20 Q. Okay. Do the steps on the retrofit,
21 since those sides are straight up and down, they
22 really only are designed to marry up with stock
23 size pipes?

24 A. Can you repeat yourself, please?

25 Q. Let's withdraw that question. Let's

1 make it easier. Take a look at the picture.

2 A. Yes.

3 Q. With the different dimensions on
4 Exhibit 3?

5 A. Yes.

6 Q. And if you look at the picture in
7 Exhibit 2, page 3, you see how there is ranges
8 for the pipe flashing of Exhibit 3?

9 A. Um-hmm.

10 Q. When you get to the retrofit flashing,
11 it just says a set diameter.

12 A. Okay.

13 Q. If you look at the retrofit flashing,
14 the sides of the steps are straight up and down?

15 A. Yes.

16 MR. ALLEN: I object to that, Mr. Linn. If
17 you look at the small retrofit, it has a range.
18 There is a range in there.

19 MR. LINN: What range are you talking about?

20 MR. ALLEN: The one at the top, 1 inch to
21 1.25 inches.

22 MR. LINN: And it says adapters for
23 projections under 1-inch diameter.

24 MR. ALLEN: No, I was referring to the one
25 below that, not the adapter.

1 THE WITNESS: That was the one below that
2 that was adapters.

3 BY MR. LINN:

4 Q. We will come back to that question. We
5 will clear up that particular question that
6 Mr. Dillis Allen has raised.

7 Under the small retrofit, there is just
8 single diameters listed on Exhibit 2, page 3?

9 A. Okay.

10 Q. With the exception of the very top one,
11 and it is says 1 to 1.25 inches diameter; do you
12 see that?

13 A. Yes.

14 Q. Is that range at the very top one set
15 out because there is this adaptor that could be
16 used with the top most step?

17 A. Honestly, I'm probably not qualified to
18 answer that question.

19 Q. Well, in that case, let's step away
20 from that.

21 A. Okay.

22 Q. In terms of the other ranges -- I'm
23 sorry, I'll withdraw that.

24 Looking at Exhibit 2, page 3, other
25 than the top most dimension that's shown there,

1 all the other dimensions are just a single
2 dimension for a stock pipe size; is that
3 correct?

4 A. Yes.

5 Q. And in the retrofit flashing, the sides
6 of the steps are just straight up and down; is
7 that correct?

8 A. In this -- again, this is marketing. I
9 don't know the exact engineering dimensions. In
10 the marketing brochure, that is correct.

11 Q. In the pipe flashing drawing shown in
12 Exhibit 3.

13 A. Um-hmm.

14 Q. There are steps, and those steps are
15 located at stock pipe sizes; is that correct?

16 A. And when you say stock, let me just
17 clarify, you've said that a couple times.

18 Q. Well, let's forget the word stock.
19 Does the word standard pipe size, does that have
20 some meaning?

21 A. Yes. And we probably should clarify
22 what standard means. Standard in my description
23 or do you want to tell me what you mean by
24 standard?

25 Q. No, let's use yours.

1 A. It's where most pipes will fall into.

2 Q. And the steps, the pipe flashing of
3 Exhibit 3, have these steps set at standard pipe
4 sizes; is that right?

5 A. That is correct.

6 MR. LINN: Okay. Let's mark this as
7 Exhibit 4.

8 (Whereupon, Opposer's Exhibit
9 No. 4 was marked for
10 identification.)

11 BY MR. LINN:

12 Q. Placing before you what's been marked
13 as Opposer's Exhibit 4 and right now that's just
14 another copy of Exhibit 3; is that accurate?

15 A. Yes.

16 Q. I made this separate, cause I want to
17 draw on Exhibit 4, so I want to keep 3 clean.

18 A. Okay.

19 Q. I'm going to draw a line that is the
20 bottom most angled surface, the bottom most step
21 of the pipe flashing. I'm drawing that line on
22 both sides of the drawing.

23 A. Um-hmm.

24 Q. Do you see I've drawn two lines up
25 there?

1 A. I have.

2 Q. I'm going to label line A and line B.

3 Line A and B that I drew coming up from the
4 bottom most step it follows the angle of the
5 bottom most step of that drawing, correct?

6 A. For the most part.

7 Q. If there weren't steps that stepped in
8 to -- on the pipe flashing but instead the pipe
9 boot just followed the angle of the bottom most
10 step all the way up in order to accommodate all
11 these sizes, you would have to have a much
12 taller pipe boot; is that correct?

13 MR. ALLEN: I object to that. You are
14 technically mischaracterizing how these pipe
15 boots are made.

16 MR. LINN: I'm asking the question of this
17 gentleman.

18 THE WITNESS: That's incorrect.

19 BY MR. LINN:

20 Q. Could you explain what was wrong with
21 my question or statement?

22 A. You would have a different angle to
23 meet your needs.

24 Q. And how is that? Could you explain
25 that?

1 A. You would widen the angle from the top
2 to the bottom.

3 Q. So the alternative to making the pipe
4 boot much taller --

5 A. Or you would make it vertical, strictly
6 vertical walls, which our competition does
7 today.

8 Q. Well, but if you wanted to have the
9 function of being able to meet all of the
10 different pipe sizes that your angled walls will
11 accommodate, you're going to need angled walls;
12 isn't that correct?

13 A. Not necessarily. I mean, you can have
14 a vertical wall, which you put a clamp around,
15 which will serve the same purpose.

16 Q. You would have to have a very large
17 number of steps, if you're going to use just
18 vertical walls?

19 A. You'd have various products to meet
20 those needs.

21 Q. So you would have to have an inventory
22 of a whole lot more specific products to meet
23 different needs; is that correct?

24 A. To meet on a vertical wall. On a
25 tapered wall, you would probably not need as

1 many products, no. You would probably be able
2 to use one product.

3 Q. And you would have to change --

4 A. You would either have to go higher, as
5 you said, or you would change the dimensions of
6 the walls, the angles of the walls.

7 Q. Could you explain that?

8 A. Sure. You would have a wider dimension
9 to meet your needs here and here. You would
10 have a wider range of pipes that would fit.

11 Q. So you'd have to make your base wider
12 and then taper it in more sharply; is that what
13 you're saying?

14 A. There would be multiple options to do
15 that, correct.

16 Q. In the approach that Portals Plus is
17 using, however, what it does is it has a
18 vertical step in that brings the wall in closer
19 towards the next standard size; is that -- I'm
20 asking?

21 MR. ALLEN: I want to clarify. I think you
22 meant horizontal.

23 MR. LINN: I did misspeak. Thank you. Let
24 me say that again.

25

1 BY MR. LINN:

2 Q. The approach that Portals Plus is using
3 is that it has angled walls that target certain
4 standard sizes and then give a range around each
5 standard size and then uses a horizontal wall to
6 move in from one standard size to the next?

7 A. Um-hmm.

8 Q. Is that yes?

9 A. Well, you could run a vertical wall
10 into an angled wall, that would accomplish what
11 you're trying to accomplish.

12 Q. Okay. I'm asking what Portals Plus is
13 doing though. Okay. Let's --

14 A. Portals Plus has --

15 Q. Let me reask the question.

16 A. All right.

17 Q. The approach that Portals Plus was
18 using in order to accommodate the various
19 standard size pipes is it has different angled
20 sections that target certain ranges around a
21 series of standard pipe sizes.

22 A. Okay.

23 Q. And then it uses a horizontal wall --

24 A. Right.

25 Q. -- to jump in from one standard size to

1 the next standard size?

2 A. Correct. That is a unique marketing
3 function that identifies our product, not from a
4 functional application standpoint. You can
5 create a cone shaped wall with diagonal walls
6 without steps that would accomplish what our
7 product does today.

8 Q. Okay. I'm not asking what you could
9 do.

10 A. Okay.

11 Q. I'm trying to get this a clear
12 question.

13 A. Sure.

14 Q. I want to ask what Portals Plus does
15 do.

16 A. Okay.

17 Q. In order to accommodate the different
18 pipe sizes.

19 A. Correct.

20 Q. Portals Plus uses a series of angled
21 walls that target different standard pipe sizes
22 and provides a range around each of those
23 standard pipe sizes?

24 A. That's correct.

25 Q. And then uses a horizontal inward wall

1 to jump from one standard pipe size to the next
2 standard pipe size?

3 A. That's correct. I was confused on your
4 question because you started off with a cone
5 shape, which is not our product.

6 Q. Yes. And if you are ever confused, I
7 would expect Mr. Allen here would keep me in
8 line, but I'll tell you, if you're ever
9 confused, let me know.

10 A. Okay.

11 Q. And I will ask you a different question
12 or explain a question or do something, cause the
13 last thing we want to have you be confused as to
14 a question, I mean truly.

15 A. Can I explain why I was confused, so
16 maybe -- you drew a cone shape and then you
17 talked about what Portals Plus does and that --

18 Q. All right. And that led to some
19 confusion, but now your last answer where you
20 did respond that this is what Portals Plus does
21 do?

22 A. That's correct.

23 Q. That's correct. There was no confusion
24 about that answer?

25 A. No.

1 (Whereupon, Opposer's Exhibit
2 No. 5 was marked for
3 identification.)

4 BY MR. LINN:

5 Q. I'm placing before you what's been
6 marked as Opposer's Exhibit 5. Can you identify
7 that, please?

8 A. It's one of our ad placements in a
9 magazine called Snips.

10 Q. Okay. What is Snips?

11 A. It's a magazine targeted to sheet metal
12 fabricators and sheet metal industry.

13 Q. Is this ad, Exhibit 5, representative
14 of the ads that your company uses for its
15 various products?

16 A. This is just one particular ad.
17 Different ads we use different meanings or
18 deliveries, but I guess, again, I'm confused on
19 the question.

20 Q. Okay. Well, let's take a look at all
21 the different logos we see here.

22 A. Yes.

23 Q. There is this picture of a blimp and
24 it's supposed to be funny that you don't have a
25 blimp yet but it has got all these logos on it.

1 And the one at the tope what is that, the
2 Commercial Products Group?

3 A. Yes.

4 Q. And is that the logo that you use
5 for --

6 A. We do not put that on our product
7 catalogs or our products itself, no, it's just a
8 holding division, but it is used in some
9 marketing advertisements, yes.

10 Q. Now, the Ward Industries trademark, I
11 think it's over on the left side in both the
12 blimp and down below, is that the mark you use
13 for that company?

14 A. Yes.

15 Q. And what does that company handle?

16 A. Sheet metal accessories for HVAC
17 commercial duct work.

18 Q. And the next trademark this AMPCO
19 thing?

20 A. Um-hmm.

21 Q. Is that the trademark you use for that
22 company's activities?

23 A. That's correct.

24 Q. And what does that company do or
25 handle?

1 A. We manufacture boiler, generator and
2 grease duct flues.

3 Q. There is this Milcor trademark; do you
4 see that?

5 A. Yes.

6 Q. Is that the trademark you use for the
7 Milcor activities?

8 A. Correct.

9 Q. And what does that company handle?

10 A. Smoke vents, access hatches and access
11 doors.

12 Q. Then there is the Portals Plus
13 trademark?

14 A. Yes.

15 Q. Is that the trademark you use to market
16 that company's activities?

17 A. Yes.

18 Q. And what does that company -- what does
19 its activities cover?

20 A. Roofing accessories.

21 Q. Okay. And then the last one is this
22 RPS accessories; do you see that trademark?

23 A. Yes.

24 Q. Is that the trademark you use to market
25 that company's activities?

1 A. That's correct.

2 Q. And what does that company do?

3 A. Again, roofing accessories/equipment
4 curbs and equipment supports.

5 (Whereupon, Opposer's Exhibit
6 No. 6 was marked for
7 identification.)

8 BY MR. LINN:

9 Q. Placing before you what's been marked
10 as Defendant's Exhibit 6, can you identify that?

11 A. It says it's "Installation
12 Instructions."

13 Q. Now --

14 MR. ALLEN: Defendant's Exhibit 6?

15 BY MR. LINN:

16 Q. I'll withdraw that. That's been marked
17 as Opposer's Exhibit 6; is that correct?

18 A. It is, yes.

19 Q. I'm placing before you what's been
20 marked as Opposer's Exhibit 6. Can you identify
21 that, please?

22 A. It says "Installation Instructions."

23 Q. Perhaps if you want to you can confer
24 with your counsel on that.

25 Are these the installation instructions

1 that your company would produce if we take a
2 break and that you would go get some
3 installation instructions for us to use today?

4 A. The answer is I don't know.

5 Q. Okay. Well, let's talk about this one,
6 and then we can double-check, and if it's the
7 right one that you use now, that's great; and
8 otherwise, we'll have to look at it.

9 A. Okay.

10 Q. Could you just walk us through the
11 installation exhibit --

12 A. Can I take a break for a second?

13 Q. Yes. Go ahead.

14 (Whereupon, a short break was
15 taken.)

16 BY MR. LINN:

17 Q. Referring to Opposer's Exhibit 6, could
18 you just walk us through the installation
19 instructions relative to the installation of a
20 Portals Plus pipe?

21 MR. ALLEN: Please ask him if he can identify
22 the document first.

23 MR. LINN: Okay. I thought I already did
24 that, but I'll be happy to do it again.

25

1 BY MR. LINN:

2 Q. I've placed before you what's been
3 marked as Opposer's Exhibit 6. Can you identify
4 that?

5 A. I have never seen it, unfortunately, so
6 I couldn't tell you exactly if this is the exact
7 instructions.

8 Q. Okay.

9 A. But if you say it comes from the web.

10 Q. I will represent to you that it comes
11 from the website, however --

12 A. Okay.

13 Q. We want testimony that we can use
14 later, so let's put this aside, and we'll
15 ultimately take a break here and see what you
16 can do about these instruction -- installation
17 instructions that I was told were going to be
18 produced and haven't been so far.

19 MR. ALLEN: Well, you can ask him questions
20 relating to this document without referring to
21 the document, if you want to, that would be
22 agreeable with me.

23 MR. LINN: No, no. You don't understand.
24 I'm trying to establish what Portals Plus and
25 whatever Hart & Cooley what they represent to

1 the public at large through their installation
2 instructions and whatever materials they use to
3 instruct people how they instruct people to do
4 certain things, and I asked him earlier without
5 any documents, and that's fine, and I tried to
6 exhaust his memory there without the aid of
7 these materials; and now I want to go to the
8 materials that Hart & Cooley is using to
9 communicate with the public and get testimony on
10 those. So we went through his memory. We're
11 now to the documents, so we're going to want to
12 go back and talk about what this document means
13 when it's telling people things, okay, does that
14 make sense?

15 MR. ALLEN: That's fine except that he can't
16 identify the document.

17 MR. LINN: That's why I said we're going to
18 have to take a break here at some point. I
19 don't know how much longer I've got. It's still
20 pretty darn early, and I would think that if
21 you've got -- do you have access to the
22 internet?

23 THE WITNESS: Yes.

24 BY MR. LINN:

25 Q. To the internet or through whatever

1 source you have to go to find this installation
2 instructions we'll do that.

3 A. Okay.

4 Q. And then we could just wrap this up and
5 rather than dancing around with a document that
6 may be or may not be the correct one. If it
7 turns out that's the correct one, great.

8 MR. ALLEN: I don't know.

9 MR. LINN: Neither do it.

10 (Whereupon, Opposer's Exhibit
11 No. 7 was marked for
12 identification.)

13 BY MR. LINN:

14 Q. Place before you what's been marked as
15 Opposer's Exhibit 7. Can you identify that,
16 please?

17 A. It looks like different material from
18 our website.

19 Q. And at the third page of this document
20 that's got a number at the bottom that says 460?

21 A. Yes.

22 Q. On that it says, "The Milcor Family of
23 Companies"?

24 A. Um-hmm.

25 Q. Does Hart & Cooley sort of informally

1 group certain companies as being the Milcor
2 family?

3 A. No. I think you're getting confused.
4 If you went to any of the brands, they would
5 probably say the same thing about each other, so
6 if you went to Portals Plus, you would have the
7 Portals Plus family of companies. If you went
8 to RPS, you would have RPS, they're related
9 brands that go along with those product lines.

10 Q. So Milcor is one product group or
11 company and Portals Plus is a different one and
12 RPS --

13 A. Right. These three brands. We have
14 HVAC and roofing brands. These are roofing
15 brands, and so intermixed between each brand,
16 you will find, you know, RPS family of
17 companies, you know, Ward family of companies,
18 you know, so. It's part of a marketing aspect.
19 Hopefully that clarifies.

20 (Whereupon, Opposer's Exhibit
21 No. 8 was marked for
22 identification.)

23 BY MR. LINN:

24 Q. I'm placing before you what has been
25 marked as Opposer's Exhibit 8. Can you identify

1 that, please?

2 A. This is a product list. It appears to
3 be from our website.

4 Q. Take your time and go through it.

5 MR. ALLEN: Was this produced?

6 MR. LINN: No, I had to get it. Your company
7 never produced any of its website or other
8 marketing materials, other than that one
9 catalog.

10 MR. ALLEN: Did you ask for them?

11 MR. LINN: I asked for all your marketing
12 materials, and all I got was one catalog.

13 MR. ALLEN: Well, if he can identify it.

14 MR. LINN: I can only use what you gave me,
15 which is the catalog, and now I'm trying to
16 flesh it out with website materials.

17 MR. ALLEN: Give him time to do that.

18 BY MR. LINN:

19 Q. Can you identify this as your website
20 or let's say it's a section of materials from
21 your website?

22 A. I can, yes.

23 Q. And is this -- these materials used to
24 sell the Portals Plus products through your
25 website?

1 A. Yes, they are marketing materials.

2 Q. And these would cover the pipe flashing
3 products; is that correct?

4 A. There is sections where it's pipe
5 portals system, and then there is sections with
6 pipe flashings, correct.

7 Q. Is the pipe portal a type of pipe
8 flashing?

9 A. It's pipe portal system, so it's three
10 different components that make up that and does
11 ultimately flash a penetration.

12 (Whereupon, Opposer's Exhibit
13 No. 9 was marked for
14 identification.)

15 BY MR. LINN:

16 Q. Placing before you what's been marked
17 as Opposer's Exhibit 9, can you identify that
18 for me, please?

19 A. Again, it appears to be off the website
20 what is our pipe flashing products.

21 Q. Does Portals Plus use the materials of
22 Exhibit 9 for marketing its products?

23 A. Yes.

24

25

1 (Whereupon, Opposer's Exhibit
2 No. 10 was marked for
3 identification.)

4 BY MR. LINN:

5 Q. Placing before you what's been marked
6 as Opposer's Exhibit 10, can you identify that,
7 please?

8 A. Again, appears to be off our website.
9 That is adapter rings for the pipe flashing on
10 the front page at least and on the second page,
11 also.

12 Q. Okay. Would you explain how an adapter
13 ring is used?

14 A. It's inserted into the top of the pipe
15 boot and used to handle penetrations that are
16 either angle ironed or different dimensions
17 other than round.

18 MR. LINN: Before I mark this, I will show
19 that to you. I cut that out of the last
20 amendment that had the drawings and the
21 description in it, and I wanted to ask him some
22 questions about the different parts and pieces.
23 I'll see if he can look at it, but I just wanted
24 to let you know where this came from.

25 MR. ALLEN: Yes. It looks like my

1 handwriting.

2 MR. LINN: It's got an identification by
3 number of all the different little parts.

4 MR. ALLEN: You can ask him questions about
5 it, but he can't identify it. Are you going to
6 mark this?

7 MR. LINN: Yes.

8 MR. ALLEN: Was there a page number on this
9 before you redacted it?

10 MR. LINN: I just compiled it, yes. I
11 took -- you can read through this, but I took
12 the diagram and then the description, and that's
13 this right here, to make it a page.

14 MR. ALLEN: Oh, I see you did some
15 gerrymandering.

16 MR. LINN: To get it all onto one page, yes.
17 I will show you the publication, if you want to
18 look at that. The difficulty with the
19 publication it's funny how you ended up doing
20 that. If you look at the description in the
21 public there, the description is what's included
22 in the paper I just gave you, it's what you
23 submitted, it's even got the little reference
24 numerals, but the reference numerals are only
25 shown in that handwritten sketch that you have

1 next to it. So I wanted to ask him questions
2 and use the picture that's got the numbers on it
3 so we've got something to point out.

4 MR. ALLEN: You can do that.

5 MR. LINN: Okay. I'm just trying to explain
6 where this came from.

7 MR. ALLEN: But I mean, he can't identify the
8 document, but if you want to ask him questions
9 about this picture here.

10 MR. LINN: That's right.

11 MR. ALLEN: Go ahead.

12 MR. LINN: All right. Can I have these back,
13 that's an old one? Can I get those back,
14 otherwise, I'll have an incomplete copy?

15 (Whereupon, Opposer's Exhibit
16 No. 11 was marked for
17 identification.)

18 BY MR. LINN:

19 Q. I'm placing before you what's been
20 marked as Opposer's Exhibit 11, and I will
21 represent to you, you don't have to agree or
22 disagree, but I will represent to you that that
23 is some drawings and a description that I took
24 from part of the application file, that it came
25 from the application file that deals with this

1 proceeding. And the reason for doing it is it's
2 got this drawing on the right side that has
3 Figure 3 that has a bunch of numbers on it and
4 that way we've got something to refer to.

5 A. Right.

6 Q. So looking at the drawing of Exhibit 11
7 that's marked Figure 3 and to the extent you
8 want to read this paragraph below, you can do
9 that, but on the pipe boot, the angled walls
10 that are cut and accommodate different, let's
11 say, nonstandard pipe sizes.

12 A. Right.

13 Q. Those are the walls 10 and 14; is that
14 correct?

15 A. Correct.

16 Q. And the rib that's used as a cutting
17 guide is item 11?

18 A. Yes.

19 Q. And when the rib is going to be used as
20 a cutting guide, the person cuts along that
21 short little wall 12?

22 A. Yes.

23 Q. And the horizontal surface 13 is the
24 one that steps back from the one standard size
25 to the next range?

1 A. Are you asking me a question?

2 Q. Yes.

3 A. Yes. That's correct.

4 Q. Okay. Now, going to Exhibit 10, the
5 adapter ring?

6 A. Yes.

7 Q. You just explained how or where the
8 adapter ring would actually be used and feel
9 free to point to any of these exhibits, if it's
10 got a picture that is helpful to you.

11 A. Just want to see the exact size they
12 need to cut this to, but in general terms, the
13 boot is cut and the adapter is placed into the
14 top of the boot and helps seal a smaller
15 penetration as such an angle iron.

16 Q. Now, when -- perhaps we can look at
17 Exhibit 11 again?

18 A. Um-hmm.

19 Q. When the pipe boot is being used with a
20 standard sized pipe and then there is a clamp
21 put at the top of the cut boot section, where is
22 the clamp placed?

23 A. Clamp is placed wherever -- just below
24 the place where you make your scissor cut or
25 knife cut.

1 Q. So in the instance that, and referring
2 to Exhibit 11, in the instance where somebody
3 uses the rib 11 and a cutting guide and cuts
4 along that wall 12 --

5 A. Correct.

6 Q. -- where would the clamp be placed?

7 A. Just below the cut 12, where ever 12
8 is.

9 Q. So would it be placed below rib 11?

10 A. In that case, yes, if it was a good
11 cut, yes.

12 Q. And does the rib 11 in those instances
13 help keep the clamp from sliding off the end?

14 A. No, the clamp is not going to move.
15 Once you tighten it down, the clamp won't move.
16 The rib is more of a marketing identification
17 function than a technical function, I guess.

18 Q. Does the rib help keep the clamp in
19 position while it's being tightened down?

20 MR. ALLEN: You already asked that.

21 THE WITNESS: I would say no.

22 BY MR. LINN:

23 Q. Okay. Just want to make sure we got
24 separate question and answer.

25 A. Okay.

1 Q. When the person is putting the rib --
2 I'm sorry, withdraw that.

3 When an operator is putting the clamp
4 and they put it below the rib before it's
5 clamped down and they're clamping it down, does
6 the rib 11 serve any locating function at all?

7 A. No. It -- you take the clamp, you
8 apply it with the boot wherever you cut and then
9 you tighten it down. I know it's hard to see,
10 but so I mean, no. You don't need the rib. The
11 rib is a -- the rib is not a functional piece,
12 it's a marketing piece.

13 Q. Okay. And I understand you're saying
14 you don't have to have the rib, but when you do
15 have the rib and you use the rib --

16 A. We use the rib as the guide, the
17 cutting guide.

18 Q. Okay. Now, in the documents that were
19 produced, we've got some sales figures for '07
20 and 2008?

21 MR. ALLEN: Trade secret now.

22 MR. LINN: I'm not going to ask what they
23 are.

24 MR. ALLEN: Okay.

25 MR. LINN: So as long as I don't ask -- I'm

1 just going to get into the production aspects
2 here. Can we stay on public?

3 MR. ALLEN: Pardon me?

4 MR. LINN: Can we stay on public? Okay.
5 We'll go on trade secret.

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1 (Whereupon, Opposer's Exhibit
2 No. 12 was marked for
3 identification.)

4 BY MR. LINN:

5 Q. I'm placing before you what's been
6 marked as Opposer's Exhibit 12. Can you
7 identify that?

8 A. Yes.

9 Q. Please identify that?

10 A. This is a previous patent that was held
11 by the original owner or is a patent that is
12 held by the original owner.

13 Q. Now, is there a pipe flashing shown in
14 this Exhibit 12?

15 A. Yes. There is a retrofit pipe
16 flashing.

17 Q. Okay. And in the retrofit pipe
18 flashing, do you know if there are steps that
19 are used to accommodate the size of different
20 pipes?

21 A. There are steps in the retrofit pipe
22 flashing. I don't know the dimensions to say
23 that they accommodate standard sizes. The
24 purpose of the patent is more the C-clamp
25 configuration, I believe, if I read this

1 correctly, and not so much the design.

2 MR. ALLEN: You don't have to read it now.

3 THE WITNESS: That's my understanding at
4 least.

5 BY MR. LINN:

6 Q. Just to get an accurate answer. In the
7 flashing, which is shown in Exhibit 12, there
8 are steps used to accommodate different sizes of
9 pipes?

10 A. There are steps used for the
11 application, yes.

12 MR. LINN: Let's go off the record.

13 (Whereupon, a discussion was had
14 off the record.)

15 (Whereupon, Opposer's Exhibit
16 No. 13 was marked for
17 identification.)

18 BY MR. LINN:

19 Q. I'm placing before you what's been
20 marked as Opposer's Exhibit 13.

21 A. Yes.

22 Q. Can you identify that, please?

23 A. These are installation instructions
24 that we put in with the pipe boots.

25 Q. And these are the installation

1 instructions used by your company for
2 instructing customers how to install pipe boots?

3 A. End users, correct.

4 MR. ALLEN: Probably should make a copy of
5 that for me.

6 THE WITNESS: I have.

7 MR. ALLEN: You have another one?

8 THE WITNESS: Oh, yeah.

9 MR. ALLEN: Are you finished?

10 MR. LINN: Just one or two more questions,
11 but I'm almost done here.

12 THE WITNESS: Sure.

13 BY MR. LINN:

14 Q. Do you have any responsibility for
15 trademark applications for the company?

16 A. No.

17 Q. Now, does your company have any written
18 agreements with any companies that would relate
19 to --

20 A. Can we back up?

21 Q. Go ahead.

22 A. I guess I have got to make sure I
23 understand that question correctly. Would I
24 facilitate trademarks? Yes. Do I directly
25 have, do the application, no, marketing manager

1 or somebody else would take care of that, and
2 we'd go through our lawyers in our firm.

3 Q. And just to be clear, if I were to give
4 you some of the papers filed, for instance, that
5 are in argument being made, would you have
6 participated in any of those things?

7 A. In the most recent, the one we're
8 talking about today?

9 Q. Well, any trademark applications.
10 Well, let's withdraw that.

11 Let's just focus on this application.
12 On the application that we are dealing with
13 today, have you had any involvement in any of
14 the filing of papers with the trademark office
15 or the preparation of papers to be filed?

16 A. No. That was done previously to our
17 acquisition.

18 Q. Is there anyone else at the company
19 that has responsibility for or was involved in
20 the preparation of papers filed in this
21 application?

22 A. No.

23 Q. Does your company have any written
24 agreements with any other company dealing with
25 pipe boots?

1 A. Yes.

2 Q. And what agreements are those?

3 A. There is confidentiality agreements.

4 Q. Okay.

5 A. There is volume agreements. That would
6 probably cover it.

7 Q. I don't want to get into the specifics
8 of these agreements at all.

9 A. Okay.

10 Q. But these volume agreements would those
11 be agreements with customers that they get
12 certain pricing structure based on volume?

13 A. I would say yes.

14 Q. Okay. Do those volume agreements have
15 anything to do with --

16 MR. ALLEN: Trade secrets here.

17 MR. LINN: Trade secrets.

18

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1 MR. LINN: No further questions.

2 MR. ALLEN: Okay. I just have a couple. I
3 don't know if we have a copy machine here, but I
4 would like to introduce this as Exhibit 1.

5 (Whereupon, Applicant Exhibit
6 No. 1 was marked for
7 identification.)

8 EXAMINATION

9 BY MR. ALLEN:

10 Q. Here is a sketch I just made during the
11 deposition here, and I've shown what is a, the
12 left side of a pipe boot in very sketchy fashion
13 showing the horizontal surface 15 and the
14 conical surface 16 similar to the Portals Plus
15 design. I've also shown another set of lines,
16 10, 12 and 14, that replicate some of your
17 competitors' designs where the stepping from one
18 pipe size to another is obtained by changing the
19 angle of the conical surface begins just above
20 the rib 11.

21 A. Um-hmm.

22 Q. And is that an acceptable way to change
23 diameters?

24 MR. LINN: Objection as to form. Leading and
25 assumes facts not in evidence, but go ahead.

1 THE WITNESS: Yes, this is what I was trying
2 to portray earlier when the -- when I was asked
3 about the questions of the cone shape as there
4 is directional change on an angle would
5 accommodate the different pipe sizes.

6 BY MR. ALLEN:

7 Q. Which requires more material, designing
8 it with the step formed by 15 and 16 or
9 designing it with the step formed by 12?

10 A. The step formed by 15 and 16 would
11 require more material and be a cost to the
12 manufacturer.

13 Q. Okay. Now, the rib 11 I have drawn in
14 as being square?

15 A. Yes.

16 Q. As opposed to semitoroidal in the
17 Portals Plus design. Is that an acceptable
18 design for the rib, the square design?

19 A. The rib would be a cutting line that
20 could be a shape of any form, does not have to
21 be conical.

22 Q. What about using a score line as your
23 cutting guide?

24 A. That is correct. You can use a score
25 line. Similar to the carpentry industry I

1 described earlier, it just -- it's just a
2 marking that relies on the operator to make the
3 cuts.

4 MR. ALLEN: Okay. That's all I have. So you
5 have to make a copy of that for Mr. Linn.

6 FURTHER EXAMINATION

7 BY MR. LINN:

8 Q. Are you familiar with molding
9 techniques and forming of products?

10 A. On a high-level view. If you get into
11 the particulars, I may have trouble answering
12 those.

13 Q. If a product is molded with a
14 protrusion from the side that is rectangular,
15 something with sharp corners, is it more
16 difficult to pull out of the mold than a rounded
17 protrusion?

18 A. I don't believe so, no.

19 Q. Do you know?

20 A. We have products that are -- do have
21 protrusions so would -- going on my experience
22 with the other products and what we produce, I
23 would say that you can accomplish those tasks.

24 Q. I understand you're saying that it
25 could be accomplished, but do you know whether

1 it's more difficult to pull it out of the mold
2 and to achieve an appropriate forming when you
3 have right angle corners in your protrusion
4 versus rounded?

5 A. No.

6 Q. In other words, you don't know?

7 A. I don't know.

8 MR. LINN: Can I make two dots and put two
9 letters on this in blue?

10 MR. ALLEN: No.

11 MR. LINN: Can we make a copy?

12 MR. ALLEN: Sure.

13 (Whereupon, a short break was
14 taken.)

15 (Whereupon, Opposer Exhibit No.
16 14 was marked for
17 identification.)

18 BY MR. LINN:

19 Q. I'm placing before you what's been
20 marked as Opposer Exhibit 14.

21 A. Yes.

22 Q. Can you confirm that that's a copy you
23 made of Applicant's Exhibit 1, except it doesn't
24 have the exhibit sticker on the bottom?

25 A. It doesn't have the exhibit sticker.

1 Q. In other words, it doesn't have
2 "Applicant's Exhibit 1" on the bottom?

3 A. Yes. Correct.

4 Q. I'm drawing a point labeled as point A;
5 do you see that?

6 A. Yes.

7 Q. And this point A is on this
8 hypothetical angled surface?

9 A. Yes.

10 Q. I've got another point B.

11 A. Um-hmm.

12 Q. That's on another surface that's, as I
13 understand it, supposed to represent a surface
14 of a Portals Plus flashing?

15 A. Correct.

16 Q. Are the points or can you tell us are A
17 and B going to fit on the same pipe?

18 A. Of course not.

19 Q. Okay. Where would you cut the Portals
20 Plus pipe boot in order to generate the same
21 diameter as A?

22 A. You're saying if you made the cut in
23 the particular instance that you have on here at
24 that point?

25 Q. Yes.

1 A. I guess to walk you through a process
2 again, you would slide, whether it's a cone
3 shape pipe boot or if it's any other pipe boot,
4 you slide it over the top of the pipe until
5 where it gets tight, you cut a little bit higher
6 to that point, and then that's where you get a
7 tighter fit no matter what pipe boot you're
8 using; and then you put your clamp on that
9 piece. So in this particular case to get the
10 same angle, you're going to cut it a little bit
11 higher on the cone shape boot.

12 Q. Okay. That said, where would you cut
13 on the Portals Plus unit in order to get a
14 diameter like that of a cut on A in this other
15 hypothetical drawing shown in Exhibit 14?

16 A. Like what direction, like lower or
17 higher? What is your options?

18 Q. Would you have to cut it down here on
19 surface 15 somewhere?

20 A. For the -- no. To get to this
21 dimension?

22 Q. Yes.

23 A. Hypothetically, if it was cut at 8, you
24 bring it in you're going to have bring this down
25 just a little bit lower; does that make sense?

1 Q. You'll have to explain that more.

2 A. Okay. For -- I guess I'm having --
3 your dimensions, you're not giving me exact
4 dimensions here.

5 Q. Okay. Perhaps this will be easier in
6 terms of the angled surface 16.

7 A. Yes.

8 Q. That has been drawn and shown in
9 Exhibit 14.

10 A. Okay.

11 Q. That provides a limited range of
12 diameters that are grouped --

13 MR. ALLEN: I have to object to this. This
14 is --

15 MR. LINN: Please don't interrupt me. Let me
16 finish the question and then object.

17 MR. ALLEN: Objection. Okay.

18 MR. LINN: I've lost my train of thought.

19 MR. ALLEN: I'm sorry, Terry.

20 BY MR. LINN:

21 Q. Is it correct that in the Portals Plus
22 pipe boot the surface 16 in the hypothetical
23 drawing provides a range of dimensions grouped
24 relative to the standard pipe size that's used
25 at the top of line 16?

1 MR. ALLEN: I object. Can I state my
2 objection?

3 MR. LINN: Sure.

4 MR. ALLEN: Well, first of all, I made this
5 sketch, and this sketch is not to scale; and the
6 draft I put hardly any draft on the line 16, in
7 actuality, there is more draft on the line 16
8 than I've drawn it here. I've drawn it nearly
9 vertical, so if it's vertical as you move up and
10 down, you're not changing the diameter; but in
11 fact, the way that this is made, as you can see
12 from the drawing, is that line 16 in the actual
13 design has way more draft on it than I've drawn
14 here. I didn't draw this for the purpose of
15 what your question is, but there is more draft
16 in it, so you could -- there is a place where
17 you could get the same diameter as point A.

18 MR. LINN: You're testifying now.

19 MR. ALLEN: I know I am. On line 16 --

20 MR. LINN: All right. I'm asking you not to
21 testify. If you want to interpose an objection,
22 that's one thing.

23 MR. ALLEN: That was an objection.

24 MR. LINN: Well, it's a leading objection in
25 which you testify in some fashion or another,

1 and I would ask you don't do that.

2 BY MR. LINN:

3 Q. Can you answer the question?

4 A. Can you repeat the question?

5 MR. LINN: Can you read the question back,
6 please?

7 (Whereupon, the record was read
8 as requested.)

9 THE WITNESS: It has an angle on line 16 that
10 covers a range of pipe boots or pipes, I'm
11 sorry, penetrations.

12 BY MR. LINN:

13 Q. And at least in the hypothetical, line
14 16, those ranges are grouped around a standard
15 pipe size?

16 A. It's from probably a range of 1 inch in
17 between the pipe size, 1 or so inches, yes.

18 MR. LINN: No further questions.

19 MR. ALLEN: Thank you.

20 MR. LINN: Mr. Allen, if you would just
21 confirm that by agreement between counsel each
22 of the attorneys will ultimately retain the
23 originals of the exhibits that they created, and
24 the court reporter will use the originals for
25 making the transcript but then she will send

1 Applicant's exhibits to you for retention and
2 the Opposer's exhibits to me, at least the
3 originals of those?

4 MR. ALLEN: But since you have to file this,
5 how are you going to make copies? Is she going
6 to make the extra copy for filing or are you
7 going to make it?

8 MR. LINN: I guess I would probably make the
9 copies.

10 MR. ALLEN: Isn't it bound? How are you
11 going to make the copies if it's bound?

12 MR. LINN: I would make the copies at the
13 time that I'm going to use the things. Right
14 now it's just a discovery deposition.

15 MR. ALLEN: You still have to file it though.

16 MR. LINN: I don't know if you have got to
17 file a discovery deposition right away.

18 MR. ALLEN: Yes, you're supposed to.

19 MR. LINN: I will take a look. If I have to,
20 that's fine. Well, are you saying that you
21 want -- let's go off the record.

22 (Whereupon, a discussion was had
23 off the record.)

24 MR. LINN: For purposes of retention of
25 original exhibits, if you could just confirm

1 that Mr. Allen will retain the original
2 Applicant's exhibit and I will retain the
3 original Opposer's exhibits; is that correct?

4 MR. ALLEN: Yes.

5 MR. LINN: And the witness is he going to
6 read and sign?

7 MR. ALLEN: Yes.

8 (FURTHER DEPONENT SAITH NOT.)

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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
3 AS HOLDINGS, INC.,)
4 Opposer,)
5 vs.)Opposition No. 91182064
6 H&C MILCOR, INC., f/k/a)
7 AQUATICO OF TEXAS, INC.,)
8 Applicant.
9

10 I, SEAN STEIMLE, being first duly sworn,
11 on oath say that I am the deponent in the
12 aforesaid deposition taken on the 3rd day of
13 October 2008; that I have read the foregoing
14 transcript of my deposition, consisting of pages
15 1 through 92 inclusive, and affix my signature
16 to same.

17 _____
SEAN STEIMLE

18
19 Subscribed and sworn to
before me this _____ day
20 of _____, 2008.
21

22 _____
Notary Public
23
24
25

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, Suzanne M. O'Driscoll, a notary public
5 within and for the County of Cook County and
6 State of Illinois, do hereby certify that
7 heretofore, to-wit, on the 3rd day of October
8 2008, personally appeared before me, at 639
9 North Thomas Drive, Bensenville, Illinois, SEAN
10 STEIMLE, in a cause now pending and undetermined
11 in the United States Patent and Trademark Office
12 Before the Trademark Trial and Appeal Board,
13 wherein AS Holdings, Inc., is the Opposer and
14 H&C Milcor, Inc., f/k/a Aquatico of Texas, Inc.,
15 is the Applicant.

16 I further certify that the said SEAN
17 STEIMLE was first duly sworn to testify the
18 truth, the whole truth and nothing but the truth
19 in the cause aforesaid; that the testimony then
20 given by said witness was reported
21 stenographically by me in the presence of the
22 said witness, and afterwards reduced to
23 typewriting by Computer-Aided Transcription, and
24 the foregoing is a true and correct transcript
25 of the testimony so given by said witness as

1 aforesaid.

2 I further certify that the signature to
3 the foregoing deposition was reserved by counsel
4 for the respective parties.

5 I further certify that the taking of this
6 deposition was pursuant to subpoena and that
7 there were present at the deposition the
8 attorneys hereinbefore mentioned.

9 I further certify that I am not counsel
10 for nor in any way related to the parties to
11 this suit, nor am I in any way interested in the
12 outcome thereof.

13 IN TESTIMONY WHEREOF: I have hereunto
14 set my hand and affixed my notarial seal this
15 day of , 2008.

16

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NOTARY PUBLIC, COOK COUNTY, ILLINOIS

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AS HOLDINGS, INC.)
Plaintiff,) Opposition No. 91182064
-vs-) Serial NO. 76/461,157
H&C MILCOR, INC. f/k/a) Mark: Miscellaneous Design
AQUATICO OF TEXAS, INC.,) (Pipe Boot Product Design)
Defendant.)
)

DEPOSITION OF: **CHRISTOPHER CARL KINTZELE**, called as a
witness by the Defendant, Pursuant to
Federal Rule Civil Procedure 30, and by
Notice and agreement.

Officer not disqualified under Rule 1.674

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by Mr. Linn{74

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INDEX OF EXHIBITS

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1 White 13-inch base pipe boot with stamping on base of "Alpha Systems EPDM 1" 14

2 Black, 13-inch base pipe boot with stamping on base of "Alpha Systems EPDM 1" 14

3 Black, 9-inch base pipe boot with the stamping on base "Alpha systems EPDM 2" 14

4 Black, 13-inch base pipe boot with stamping on the bottom horizontal circumference of "DFDP EPDM" 14

5 Black, 9-inch base pipe boot with the stamping of "BFPCO" and "PIPE FLASHING 1/2-1-1 1/2-2-2 1/2, EPDM" 14

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7	1 Color photograph of pipe boot, 13-inch base depicting stamp on base "Alpha Systems EPDM 1"	16
8	1 color photograph of white 13-inch base pipe boot	16
9	1-page, Hand-drawn document depicting steps on pipe boot, dated 11-12-08, Labeled "Exh A"	33
10	1-page, Document labeled as "Exh B", dated 11 (12 13) 08, hand-drawn diagram depicting steps of pipe boot	43
11	26-pages, documents marked "CONFIDENTIAL-TRADE SECRET/COMMERCIALLY SENSITIVE" from Maple Mold Technologies	58
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2	NUMBER	DESCRIPTION	MARKED
3	22	1 color photograph depicting white pipe boot	78
4	23	1 color photograph depicting black pipe boot with the stamping "BFDP EPDM" on the bottom horizontal ring	78
5	24	1 color photograph depicting small black pipe boot with the stamping of "ALPHA SYSTEMS EPDM 2"	78
6	25	1 color photograph of black pipe boot with the stamping on the base of "cut above rib"	78
7	26	1 color photograph of base of black pipe boot with stamping of "CUT ABOVE RIB"	78
8	27	1 color photograph of black pipe boot with the stamping on base "FBPCO"	78
9	28	1 color photograph of black pipe boot with the stamping on base "pipe flashing 1/2-1-1 1/2-2-2 1/2 epdm"	78
10	29	9-pages, print-out of GenFlex Roofing Systems website pages	78
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1 (WHEREUPON, the following
2 proceedings were had starting
3 at 11:20 a.m.)
4

5 MR. DILLIS V. ALLEN: On the record.

6 There are certain documents and testimony
7 that Mr. Lynn will want to identify as
8 confidential. Hopefully not too many. I don't
9 really think there's a lot of confidential stuff
10 I'm going to ask you about.

11 And I don't know how you want to treat them
12 in the other deposition. They were bound
13 separately.

14 I don't know whether you want to do that
15 again or not.

16 I mean --

17 MR. TERENCE J. LINN: I would suggest --
18 yeah, why don't we do it that way.

19 That's certainly -- well, it's easiest to
20 avoid mistakes and I think the Protective Order
21 also provides that that it be bound separately.

22 I would suggest to the extent you can, if we
23 start getting into a confidential area, if you
24 sort of group the questioning that deals with the
25 confidential so it's altogether, that way you

1 don't have one page, you know, confidential and a
2 page of public, and page of confidential and a
3 page of public. But do it however you want.

4 MR. DILLIS V. ALLEN: We'll try to do that.

5 MR. TERENCE J. LINN: Yeah.

6 MR. DILLIS V. ALLEN: Okay. Swear the
7 witness.

8

9 **CHRISTOPHER CARL KINTZELE,**

10 Called as a witness by the Defendant, pursuant to
11 Federal Civil Procedure 30, and by notice and agreement,
12 first being duly sworn testifies as follows:

13

14 **DIRECT EXAMINATION**

15 BY MR. DILLIS V. ALLEN:

16 Q State your name, please.

17 A Christopher C. Kintzele.

18 Q And your address?

19 A 5120 Beck Drive, Elkhart 46516.

20 Q Home-address?

21 A 30344 Quailpoint Drive, Granger, Indiana.

22 Q Okay.

23 Now, I was here last night and I took some
24 photographs of some of these samples (Indicating) of
25 pipe boots that you have produced in response to

1 Request-for-Production of documents that included --
2 and I'm not going to pull them out -- but that included
3 all of the prototype pipe boots made by AS Holdings,
4 Alpha Systems, and all of the pipe boots made by
5 Portals Plus.

6 And, we're sitting here in front of five pipe
7 boots, and are these all the pipe boots that would be
8 responsive to those two questions?

9 Or are there others?

10 A These are representations of those.

11 These are the only two styles we produce. This, I
12 guess I'll call it a "smaller version", and then this
13 "larger version."

14 But, we have, for instance, more than one of these
15 laying around. We have some boxed in the warehouse,
16 for example, when we produced these. We didn't produce
17 one of them.

18 Q What do you mean by "boxes"?

19 Are they in commercially/designed boxes?

20 A They're -- I'm speculating. But they're either on
21 pallets stacked up like this (Indicating);

22 Or we would have thrown them in a box -- what we
23 -- the way we normally package our prototype parts.

24 Q So you consider these "prototypes"?

25 A At this point none of these -- we have not sold any of

1 these.

2 Q I understand that.

3 But, -- and I'm jumping ahead a little bit, but
4 the tooling that you had made -- if I'm not mistaken,
5 you had a two-cavity tool made for the large one which
6 I think you refer to as a "13-inch."

7 And, another two-cavity mold made for the small
8 one, which you referred to as a "9-inch."

9 Is that accurate?

10 A Yes.

11 Q So what would be the volume of the two sizes that you
12 have molded thus far?

13 A I don't have an exact number for that.

14 Q What is the approximate?

15 More than a thousand?

16 A No.

17 Q Under a thousand?

18 A Yes.

19 Q Okay.

20 Now, these two pipe boots that we haven't
21 identified, yet, are these produced in response to my
22 request for Portals Plus type boots?

23 A I'm not sure I understand the question.

24 Q Well, --

25 A These two boots right here?

1 Q Yeah.

2 Here. (Indicating)?

3 A We -- we did not produce these (Indicating).

4 Q I understand that.

5 But we made a request for production of documents
6 for pipe boots, all the pipe boots that were made by
7 Portals Plus that you went out and obtained for
8 whatever purpose.

9 MR. TERENCE J. LINN: I might be able to
10 help.

11 I'm not going to answer the question.

12 But, I will say that: In producing the
13 samples that were produced today, Alpha produced
14 all of the pipe boots that they had that were made
15 by a Company other than Alpha.

16 And, they also produced sample or prototypes
17 or exemplars of the pipe boots that Alpha had
18 made.

19 So, in producing the ones that were not made
20 by Alpha, the Production Request was interpreted
21 so broadly that we looked at it and said, "any
22 pipe boot of any entity other than Alpha -- as
23 long as Alpha had it -- we were producing it.

24 MR. DILLIS V. ALLEN: There's only two here.

25 And, so, these are all the pipe boots that

1 you have in the possession of AS that are not made
2 by AS or Alpha Systems, these two right here that
3 I have my hands on (Indicating)?

4 A No.

5 MR. DILLIS V. ALLEN::

6 Q Where are the other ones?

7 A We -- I'm going to speculate that we have some in our
8 warehouse.

9 We actually sell these pipe boots or did sell
10 these pipe boots so we may have additional ones in
11 inventory (Indicating).

12 And, I may have additional ones of that same style
13 in my office, actually.

14 Q You have actually sold these pipe boots (Indicating)?

15 A Yes.

16 That style.

17 Q What do you mean "that style"?

18 A Well, I don't know who makes these, but we buy these
19 from Firestone.

20 And that's what that "BFDP" stands for
21 Bridgestone, Firestone.

22 Q So, -- (Indicating).

23 So, these -- these two pipe boots are made by
24 Bridgestone/Firestone and Alpha System has sold these?

25 A I don't know who makes those pipe boots.

1 But, we buy them from Firestone.

2 Q I see.

3 So, without speculating, do you have any
4 information that these two pipe boots were made by
5 Portal Plus for Firestone?

6 A That would be purely speculation.

7 Q Is it possible, though?

8 A Sure. I guess.

9 I don't know where Firestone gets them. I just
10 know that we buy those from Firestone.

11 Q Okay.

12 So what kind of -- what kind of volume are you
13 doing in selling these pipe boots that you're buying
14 from Firestone?

15 And, if he wants to mark that as "confidential"
16 that's okay.

17 MR. TERENCE J. LINN: Well, if we're going
18 to talk about --

19 MR. DILLIS V. ALLEN: It's just an
20 approximate.

21 MR. TERENCE J. LINN: Well, yeah. That's
22 true.

23 Why don't we mark that "First-level
24 confidential."

25 This is not "Trade-Secret," but just "First

1 level confidential."
2 MR. DILLIS V. ALLEN:S: That's fine.
3 (WHEREUPON, THE FOLLOWING
4 TESTIMONY IS FIRST-LEVEL
5 CONFIDENTIAL.)
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12 **(NON-CONFIDENTIAL TESTIMONY CONTINUES.)**

13 MR. DILLIS V. ALLEN: Well, we should mark

14 these since we've kind of identified these.

15 Let's mark these as exhibits in -- well,

16 mark the white one first.

17 This one sticks to the table.

18 THE WITNESS: Yeah. Here.

19 If you lift up on it.

20 MR. DILLIS V. ALLEN: (Indicating).

21 If we could mark these in this order as 1,

22 2, 3.

23 Then we'll mark these 4, 5.

24 **(WHEREUPON, DEFENDANT'S**

25 **PHYSICAL EXHIBITS WERE MARKED**

1 **FOR I.D. AS NO's. 1, 2, 3, 4,**
2 **5.)**

3 THE REPORTER: One through five, sir.
4 BY MR. DILLIS V. ALLEN:

5 Q And, so, the Reporter -- if you'll confirm what I'm
6 going to say, Mr. Kintzele -- has marked Exhibit 1 as a
7 white prototype made by Alpha Systems?

8 A Correct.

9 Q Exhibit 2 is a black prototype made by Alpha Systems?

10 A Correct.

11 Q Exhibit 3 is a 9-inch smaller prototype made by Alpha
12 Systems?

13 A Correct.

14 Q Exhibit 4 is a black production type made by Firestone
15 and purchased by Alpha Systems for resale?

16 A Correct.

17 Q And Exhibit 5 is a 9-inch pipe boot purchased by Alpha
18 Systems from Firestone for resale?

19 A Correct.

20 Q You have sold those?

21 A (No audible response.)

22 Q Now, last night I took some photographs -- which are
23 very amateurish -- of some of these five exhibits.

24 And, I want to see if you can relate the
25 photographs to these particular samples.

1 And I only have three because my photography
2 stinks (Indicating).

3 Okay. Here's the first one.

4 (Photograph tendered to
5 witness.)

6 MR. DILLIS V. ALLEN:

7 BY MR. DILLIS V. ALLEN:

8 Q That's a photograph.

9 And, tell me if that corresponds to Exhibit 4,
10 made by Firestone?

11 A Correct (Indicating).

12 Q Okay.

13 So, we're going to mark that Exhibit 6.
14 If you will hand that to the Reporter.

15 **(WHEREUPON, PHOTOGRAPHS WERE**
16 **MARKED FOR I.D. AS**
17 **DEFENDANT'S NO. 6, 7, 8.)**

18 THE REPORTER: Number 6.

19 BY MR. DILLIS V. ALLEN:

20 Q Okay.

21 Now, I'm going to hand you a second photograph
22 that I took last night, that I believe corresponds with
23 Exhibit, the Alpha Systems 13-inch prototype in black?

24 A (Indicating).

25 Okay.

1 I'll give you the benefit of the doubt on this
2 one.

3 It looks like it snowed on this one.

4 Q It's not great.

5 But what I tried to do was to get the name "Alpha
6 Systems" in the photograph?

7 A Okay.

8 Q And, not take the product.

9 So, that would be Exhibit 7 -- and 6 was...

10 THE REPORTER: The last exhibit marked was
11 6.

12 MR. TERENCE J. LINN: Yes.

13 Well, this is Exhibit 7. Right?

14 MR. DILLIS V. ALLEN: Yes.

15 MR. TERENCE J. LINN: Moving on to the new
16 Exhibit 7.

17 MR. DILLIS V. ALLEN: Okay.

18 No, you're right.

19 MR. TERENCE J. LINN: Six is Firestone.

20 And, 7 is the Alpha.

21 MR. DILLIS V. ALLEN: Okay. All right.

22 BY MR. DILLIS V. ALLEN:

23 Q Okay.

24 Now, I hand you another photograph of a white pipe
25 boot.

1 A (Indicating).

2 Q And, see if you can identify that as the white Alpha
3 Systems pipe boot that I also took last night?

4 A The Alpha System stamp didn't come through very clear,
5 but I'll agree it looks like Exhibit 1.

6 Q Okay.

7 It's extremely difficult to pick that up without
8 special lighting.

9 You have to have special lighting to pick this
10 stuff up.

11 THE REPORTER: Did you want this marked?

12 MR. TERENCE J. LINN: That's 8.

13 **(WHEREUPON, PHOTOGRAPH WAS**
14 **MARKED AS NO. 8.)**

15 THE REPORTER: Number 8, sir.

16 THE WITNESS: All right.

17 BY MR. DILLIS V. ALLEN:

18 Q What I'm going to do to save some time, is try to --
19 this big stack we have here of exhibits, I'm going to
20 try to get those in at the end of my questions to save
21 time rather than going through them in some kind of a
22 chronological order.

23 We'll see how it works.

24 So, could you summarize for us your --
25 Mr. Kentzele, your education, post high school?

1 A I received an Accounting Degree from Purdue University
2 in West Lafayette.

3 And, a Master's of Business-Administration from
4 Notre Dame.

5 Q What year was that?

6 A 2002.

7 Q So, you have been employed at AS Holdings from 2003 to
8 the present?

9 A I have.

10 Q And what positions did you hold?

11 A I was hired-in as the Accounting Manager reporting to
12 the CFO.

13 And, then, moved into an Operations role, which
14 had me overseeing the Manufacturing and Distribution
15 Operations of the Company.

16 And, then, moved into the CFO role.

17 Q So, you're presently the Chief-Financial-Officer of
18 this Company?

19 A Correct.

20 Q Okay.

21 Now, you're attorneys produced a plurality of
22 Portal Plus' brochures that I'm going to -- when we
23 finish this up, I'm going to try to get them into the
24 record.

25 But, in the answers to our Interrogatories your

1 response -- and I believe you signed the -- did you not
2 sign the Interrogatories that were answered?

3 A I can't recall is that --

4 MR. TERENCE J. LINN: I don't remember if it
5 was you or someone else.

6 BY MR. DILLIS V. ALLEN:

7 Q Okay.

8 But, in any event: In these Interrogatories AS
9 Holdings responded to a question as to when AS Holdings
10 made the decision to enter the pipe boot market.

11 And the answer was: "June 23, 2006."

12 Can you confirm that approximate date without
13 being too nit-picky?

14 A I guess without checking any notes, it sounds
15 reasonable.

16 Q Okay.

17 Now, when you made that -- when the AS Holdings
18 made that decision, were you familiar with the pipe
19 boot designs of Portals Plus?

20 A No.

21 Q You were not?

22 A No.

23 Q When were you first aware of pipe boot designs made by
24 Portals Plus?

25 A I couldn't tell you exactly.

1 I still have not seen or felt a Portals Plus pipe
2 boot.

3 But, I believe I've seen pictures of them on their
4 Web-site.

5 Q Okay.

6 But backing up: These Firestone pipe boots -- you
7 don't know who made them?

8 A Correct.

9 Q They could have been made by Portals Plus?

10 MR. TERENCE J. LINN: Objection. Asks for
11 speculation. The witness has already answered
12 that.

13 MR. DILLIS V. ALLEN: Okay.

14 BY MR. DILLIS V. ALLEN:

15 Q Are you aware that Portals Plus makes private/label
16 pipe boots for other companies?

17 A No.

18 Q You are not?

19 A No.

20 Q Okay.

21 So, you have a plurality of documents that were
22 produced that relate to tooling that you subcontracted
23 for producing prototype pipe boots.

24 Is that correct?

25 A Yes.

1 Q And I'm going to -- we'll introduce the documents
2 later.

3 But in the interests of moving along instead of
4 standing here, we're going to do this a little
5 different way.

6 And, the delivery/date that I see on the tooling
7 for at least the 13-inch one, which corresponds to
8 Exhibit 1, and Exhibit 2, I believe, is the 13-inch:

9 That you received that tool about March of '07.

10 Is that approximately when you received that
11 tooling from -- I don't know the name here.

12 What was the name of the tooling manufacturer.

13 Was it "Maple Mold"?

14 A "Maple Mold."

15 MR. DILLIS V. ALLEN:S

16 Q So you -- does that seem like a fair estimate of when
17 you received the tooling?

18 Or at least the 13-inch which corresponds to
19 Exhibit 1 and 2 from Maple Mold?

20 A Yes. That sounds reasonable.

21 Q And, you were personally involved in the tooling
22 manufacturer liaison with Maple Mold?

23 A Yes.

24 Q Who was your contact there?

25 A "Doug Bachan."

1 Q How do you spell that, please?

2 A Doug is D-O-U-G.

3 Bachan is B-A-C-H-A-N.

4 Q And they're located where?

5 A They are outside of Detroit in Auburn Hills, I believe.

6 Q Okay.

7 Now, prior to the time that the tooling was made,
8 were you aware of any Portals Plus pipe boot designs?

9 A No.

10 Q So, prior to March 7th you never saw a Portals Plus
11 pipe boot?

12 A Correct.

13 Q But, you did see these two, which are Exhibit 4 and 5?

14 A Correct.

15 Q So, prior to March 7, you were aware of these two pipe
16 boots (Indicating)?

17 A Correct.

18 Q Exhibit 4 and 5.

19 Okay.

20 Now, did you have any drawings for the Portals
21 Plus prototypes, Exhibits 1 and 2?

22 MR. TERENCE J. LINN: Objection. That
23 misstates the record.

24 MR. DILLIS V. ALLEN: In what way?

25 MR. TERENCE J. LINN: You called Exhibits 1

1 and 2 a "Portals Plus" --

2 MR. DILLIS V. ALLEN: Oh. I'm sorry.

3 MR. TERENCE J. LINN: -- prototype.

4 MR. DILLIS V. ALLEN: Oh. I'm sorry.

5 I'm sorry. Okay.

6 BY MR. DILLIS V. ALLEN:

7 Q Did you make any drawings to assist Maple Mold in
8 making the 9-inch and 13-inch pipe boots prototypes for
9 Alpha Systems?

10 A Not to my recollection.

11 Q Okay.

12 What did they make the tooling from?

13 A Sample parts.

14 We sent them sample parts.

15 Q Of what?

16 A Those Firestone pipe boots.

17 Q How did you make the sample parts?

18 A We bought them from Firestone.

19 Q So, you sent Maple Mold samples of Exhibit 4 and
20 Exhibit 5 to make the tooling from -- to make Exhibit 1
21 and Exhibit 2?

22 A Exhibit 1 and Exhibit 3, I think you mean.

23 But, yes. That's my recollection.

24 Q Right. Exhibit 3.

25 Do you know how they did that?

1 A No.

2 Q And, what was Doug's last-name?

3 A "Bachan."

4 B-A-C-H-A-N.

5 Q Well, isn't Alpha Systems a molding company, basically?

6 A Injection Molding is one of our divisions, but I would
7 not classify it as just an "injection molding company."

8 Q How would you classify yourself?

9 A I would classify us as a Company that specializes in
10 thermal forming, adhesive manufacturing, and injection
11 molding.

12 Q Do you do any vacuum molding?

13 A We do.

14 Yes. That's what I labeled "thermal forming."

15 Q Okay.

16 So, now I understand, you know, you are not an
17 Engineer. You are an Accountant.

18 But: Do you have any idea how Maple Mold would
19 take Exhibit 4 (Indicating) and make a prototype mold
20 from that?

21 A My speculation is that they will measure a sample part
22 at various locations and try and recreate it.

23 Q So, they didn't -- for example: As far as you know,
24 did they use Exhibit 4 as a "Master" to make Exhibits 1
25 and 3 (Indicating)?

1 A As far as I know they did not.

2 Q But they might have?

3 MR. TERENCE J. LINN: Objection. Requests
4 speculation.

5 (PAUSE IN THE PROCEEDINGS.)

6 BY MR. DILLIS V. ALLEN:

7 Q Now, last night I saw your tool.

8 And -- for Exhibit 1 and 3.

9 I assume that both Exhibit 1 and Exhibit 3 were
10 made from the same tool which was the two/cavity mold
11 that we saw last night.

12 Is that correct?

13 A We didn't see the tool that would have made Exhibit 3
14 (Indicating).

15 The tool that was open was the tool that would
16 have made Exhibits 1 and 2.

17 Q Oh. I'm sorry.

18 You're connect.

19 A And, that's the one we would observed last night.

20 Q Is that right.

21 Okay.

22 MR. TERENCE J. LINN: If you will recall,
23 they were going to go drag us over to the 9-inch
24 tool.

25 And you said "Didn't need to."

1 MR. DILLIS V. ALLEN:: That's correct.

2 Okay.

3 BY MR. DILLIS V. ALLEN:

4 Q But, in any event -- are you familiar with mold forming
5 tools at all, Mr. Kentzele?

6 A I'm sorry.

7 I'm not sure I understand the question.

8 Q Well, when they have all these molding operations out
9 there you have to build tools to make them:

10 And let me ask you: If you're familiar with a
11 process that makes tools from a "Master" as opposed to
12 making them from an Engineering Drawing?

13 A I'm not familiar with that.

14 Q You're not familiar with a process that has a metal
15 mold and then you place a "Master" inside the mold and
16 then inject it with epoxy to make a low/cost mold?

17 A No.

18 Q Are you familiar with that process?

19 A We've never had such an injection mold before.

20 We've never purchased one.

21 And, I don't know if --

22 Q So --

23 A -- maybe we don't use it that much.

24 Q So, all of your tooling is one hundred percent metal.

25 You don't use any synthetics?

1 A We do not.

2 Yes --

3 Q For the cavities?

4 A Yes.

5 All our tools are metal.

6 Q And, do you have all your tools made in the United
7 States?

8 A No.

9 Q Okay.

10 Does AS Holdings -- let me back up.

11 And, I want to have this clear:

12 You have no drawings for either Exhibit 1 or
13 Exhibit 2?

14 A Not to my knowledge.

15 Typically Maple Mold retains the drawings.

16 Q Oh, do they have drawings?

17 A I would guess.

18 They typically have drawings of our tools. I
19 don't know if he has drawings of these or not, but
20 that's a typical practice -- is that he will have the
21 drawings.

22 Q So, they've made other tooling for you?

23 A Yes.

24 Q Okay.

25 Does AS Holdings have an Engineering Department?

1 A No.

2 Q Did you ever consider hiring some Consulting Engineer
3 to design a pipe boots for AS Holdings?

4 A No.

5 Q Why didn't you?

6 A We -- just typically not our practice.

7 Q What is your normal practice?

8 A For designing tooling?

9 Q Yes.

10 A Well, sometimes we conceptualize it and explain to the
11 mold-maker what we're after.

12 And he can create CAD drawings from it. And we
13 can then adjust it depending on how we envision that
14 part needing to be done.

15 Or, we can do -- similar to what we did here
16 (Indicating) -- and send a sample part and ask him to
17 try and generate data from that.

18 Q So you -- it's a common practice for you to send parts
19 made by other manufacturers to your tool-maker to
20 design that part?

21 Or replicate it?

22 A Correct.

23 Q Common-practice, is it?

24 A Yes.

25 Q And, when you do this, do you -- do you have some

1 preliminary investigation as to whether or not these
2 parts are proprietary that you're sending to your
3 tool-maker?

4 A Yes.

5 Q How do you do that?

6 A Consult our Patent Attorney.

7 Q So, in this particular case, of sending the Firestone
8 production samples to Maple Mold, AS Holdings did zero
9 Engineering on this product?

10 A That's a true statement.

11 Or, I mean, an accurate statement, I would say.

12 Q So, when you got this tooling from Maple Mold in March
13 of 2007, did you immediately begin making some
14 prototype samples?

15 A I'm not sure about "immediately" because we have
16 production that we would need to schedule getting a new
17 tool in.

18 So, I'm not sure how soon after we got the tool
19 that we would have run sample parts.

20 Q And, I asked some questions about testing.

21 Did you run any tests that you are aware of on
22 these prototype samples of Exhibits 1 and 2?

23 A I'm not aware of any testing.

24 Q Of your own?

25 A I did not perform any testing.

1 Q Okay.

2 Some of the answers that I got indicate that there
3 was some testing done.

4 And, you may not have been involved in it.

5 So, it's not something you would know, you have to
6 worry about being inaccurate on.

7 And, I understand a part of you -- the answer to
8 this in part -- and I'm just having a little confusion
9 as to why you decided to -- and I don't want to use the
10 word "Pirate" because your attorney is going to get
11 mad.

12 But, I can't understand why you would replicate --
13 the word "replicate" is a milder word -- the Firestone
14 design instead of designing your own pipe boot.

15 What was the reason for that?

16 MR. TERENCE J. LINN: Objection to the
17 question. It's statement/commentary by Counsel.

18 You've tacked on two -- a statement and a
19 question.

20 If you want to ask this witness a question,
21 please do so.

22 But, don't pontificate on the record and
23 then throw out a -- append a question to it.

24 MR. DILLIS V. ALLEN:

25 Q Can you answer?

1 A Can you reask the question?

2 Q Why didn't you design your own pipe boot?

3 A My understanding is that the pipe boot that we are
4 Purchasing from Firestone has the qualities that are
5 deemed, I guess, "acceptable" by roofing contractors.

6 Q Do you mean because they are initially successful?

7 A Yes.

8 Or, they work in commercial applications that we
9 were hoping to sell them to.

10 Q Without spending any Engineering money?

11 A Yes.

12 MR. TERENCE J. LINN: Objection. If that's a
13 question, please put a question mark on it.

14 That's just a statement.

15 MR. DILLIS V. ALLEN: Put a question mark on
16 it.

17 THE REPORTER: Yes, sir.

18 (PAUSE IN THE PROCEEDINGS.)

19 BY MR. DILLIS V. ALLEN:

20 Q Now, I'm going to hand you a sketch that I made myself.
21 Very crude.

22 A Okay. (Indicating).

23 Q Very crude.

24 A (Indicating).
25

1 MR. DILLIS V. ALLEN: And, I'm going to give
2 you, Counsel -- if I have one -- a copy.

3 (Document tendered to
4 counsel.)

5 MR. TERENCE J. LINN: Thank you.

6 BY MR. DILLIS V. ALLEN:

7 Q I've identified it as Exhibit "B", but we're going to
8 have this Reporter mark it whatever, the next number,
9 which looks like 9.

10 MR. TERENCE J. LINN: I'm sorry. What are
11 you talking being a "B"?

12 Is that --

13 MR. DILLIS V. ALLEN: Oh. I'm sorry.

14 That's "A."

15 MR. TERENCE J. LINN: Do you want to get
16 this marked before you start talking about it that
17 way there's no confusion later?

18 MR. DILLIS V. ALLEN: That's fine.

19 MR. TERENCE J. LINN: Well, did you intend
20 to mark it? If you don't, we won't.

21 MR. DILLIS V. ALLEN: No.

22 **(WHEREUPON, DOCUMENT WAS**

23 **MARKED FOR I.D. AS**

24 **DEFENDANT'S NO. 9.)**

25 THE REPORTER: Number 9.

1 THE WITNESS: Thank you.

2 MR. DILLIS V. ALLEN: This is 9?

3 THE REPORTER: Yes, sir.

4 MR. DILLIS V. ALLEN: Okay.

5 BY MR. DILLIS V. ALLEN:

6 Q Now, this is a very crude sketch made by myself
7 (Indicating).

8 It is not intended to depict exact dimensions or
9 anything.

10 But, this is intended to be a cross-section of the
11 left-half of a pipe boot.

12 Does that make any general sense to you?

13 A Yes.

14 Q Okay.

15 And, horizontal, annular plane 10 is the part that
16 is sealed to the roof.

17 Eleven is the first frusto-conical surface.

18 Twelve is intended to depict the Portals Plus and
19 AS Holding's horizontal step.

20 Thirteen is intended to depict the second
21 frusto-conical surface, and the AS Holdings' and
22 Portals Plus' pipe boot.

23 Horizontal annular surface 14 is intended to
24 depict the horizontal step in the AS, and Portals Plus'
25 pipe boot.

1 Fifteen is intended to depict the frusto-conical
2 surface and the third step of the Portals Plus' pipe
3 boot, and the AS Holdings' pipe boot.

4 Horizontal step 16 is intended to depict
5 horizontal step that's in the AS Holding's and Portals
6 Plus' pipe boot.

7 And, frusto-conical surface 17 is intended to
8 depict the third frusto-conical surface of the AS
9 Holdings' and the Portals Plus' pipe boot.

10 Now, overlaid upon that and similar to the
11 construction of Exhibit 5 (Indicating), and Exhibit 3
12 (Indicating), I have drawn frusto conical surfaces 18,
13 19 and 20.

14 Does that make any sense to you?

15 MR. TERENCE J. LINN: Before you answer that
16 I just want to interpose an objection for the
17 record:

18 To the extent that Counsel is making a
19 representation as to what these actually
20 represent, that's just a representation being
21 made.

22 There's no representation that these are in
23 fact accurate or even representative of the pieces
24 of equipment that were mentioned.

25 In particular, I know counsel has referenced

1 the Portals Plus pipe boot, which this witness has
2 testified he has never seen.

3 So, as to a relationship between the Portals
4 Plus product and the sketch, I would object that
5 he is not in a position to make his own
6 independent assessment, but to the extent you're
7 making a representation -- to the extent that all
8 means anything to you, you can go ahead.

9 MR. DILLIS V. ALLEN: Well, let me -- yeah,
10 your Counsel is correct.

11 Instead of referring to the Portals Plus in
12 my narrative, let's refer to Defendant's Exhibit
13 4, which is the Firestone one.

14 So, take that as a modification on that.
15 He's absolutely right about that.

16 MR. TERENCE J. LINN: And just to restate
17 the objection: To the extent that he's making a
18 representation that was his intent in drawing
19 these, as I understand it it's just a
20 representation.

21 He was trying to make a crude drawing.

22 And that there's not a representation that
23 these are in fact accurate characterizations of
24 the two products.

25 With that objection, to the extent you can

1 answer any questions, go ahead.

2 THE WITNESS:

3 A What was the question?

4 MR. DILLIS V. ALLEN:S: Okay. All right.

5 BY MR. DILLIS V. ALLEN:

6 Q My question is:

7 And I understand that you told me you not only
8 didn't design these pipe boots. We've already been
9 through that.

10 But, my question -- and I know you're not an
11 Engineer, and I know you don't have an Engineering
12 Department here, but my question is:

13 Why could AS Holdings designed a pipe boot -- if
14 you'll look at -- with surface 18, 19 and 20, as you
15 did with Exhibit 5, and Exhibit 3, instead of making
16 the horizontal steps, 12, 14, and 16?

17 "Functionally", I'm saying.

18 A I've never actually installed any pipe boots before.

19 So, I'm probably am not in a good position to
20 answer that.

21 Q And -- but has anybody in AS Holdings ever installed a
22 pipe boot?

23 A If anybody has, it would probably be Mike Hubbard.

24 But, I don't know.

25 Q But you have already testified that you didn't -- you

1 didn't know whether anyone had tested any of the
2 prototypes of AS Holdings.

3 You've already said that?

4 A Correct.

5 MR. TERENCE J. LINN:: Objection. Are you
6 just telling him what he has testified to already?
7 Or is that a question?

8 MR. DILLIS V. ALLEN:S: Well, he's
9 suggesting that Mike Hubbard installed pipe boot,
10 which might be termed "the test."

11 MR. TERENCE J. LINN: Objection. You asked
12 him a question. He answered it.

13 Now you're making a statement about what he
14 testified to previously.

15 If you have got questions for this man,
16 please ask them.

17 If you want to testify, do it at some other
18 time.

19 BY MR. DILLIS V. ALLEN:

20 Q So, do you know whether Mike Hubbard ever installed an
21 AS Holdings pipe boot?

22 A I do not know the answer to that with certainty.

23 Q Okay.

24 Okey-doke.

25 Okay.

1 Now, going back to Exhibit 9 again, if you will
2 look at Exhibit 9, you'll see that the rib, 23, I tried
3 to depict it in a manner that was consistent with
4 Exhibit 1 and 2, being semi-circular in cross-section?

5 A (Indicating).

6 Q At 23?

7 MR. TERENCE J. LINN: I'm sorry. Is there a
8 question pending?

9 MR. DILLIS V. ALLEN: Yes.

10 I want to know if he can see it.

11 BY MR. DILLIS V. ALLEN:

12 Q Do you see where it's depicted?

13 A Yes.

14 Q Okay.

15 Now, if you will look at the rib, 22, I tried to
16 depict that as trapezoidal or rectangular.

17 A I see 22 on here.

18 Q Is that correct?

19 Is that trapezoidal or rectangular, generally?

20 A Generally, yes.

21 Q My drawing is not very good.

22 I apologize for it.

23 And, the rib, 21, is pyramidal in cross-section.

24 Is that correct?

25 A Generally, correct.

1 Q Generally.

2 Yes, generally.

3 Now, my question is: Why did AS Holdings adapt a
4 semi-circular configuration at 23 -- I don't want to
5 compound this too much because I'm going to get some
6 "noise" from your attorney -- rather than the shape of
7 the rib, the rectangular rib, 22, or the pyramidal rib,
8 21?

9 A I could not answer that question.

10 Q Who could?

11 A I don't know.

12 Q Nobody in this Company could answer that question?

13 A I don't know if they can or not.

14 I know I can't answer it.

15 Q So, I know you don't have any -- you don't have an
16 Engineering Department in this Company.

17 But, do you have any Graduate Engineers that
18 participated in the pipe boot project?

19 A Not to my knowledge.

20 Q None.

21 That is correct?

22 A To my knowledge, that would be correct.

23 Q Well, who would know if you don't?

24 A I'm not familiar with everybody's Degrees.

25 Q Well, I'm talking about the ones -- just -- not

1 everybody in the whole Company. I'm talking -- how
2 many employees do we have here?

3 A Just under 100, now.

4 Q Okay.

5 And you -- those employees that participated in
6 the pipe boot project, to your knowledge, are any of
7 them Engineers, Graduate Engineers?

8 A Not to my knowledge.

9 Q Okay.

10 (PAUSE IN THE PROCEEDINGS.)

11 BY MR. DILLIS V. ALLEN:

12 Q So, is David Smith, Jr, a Graduate Engineer?

13 A I don't know the answer to that for sure, but I think
14 not.

15 Q How about Joseph W. Merriman? Is he a Graduate
16 Engineering?

17 A I don't believe he is.

18 Q How about Timothy Larson?

19 A I don't know if Tim is or not.

20 Q How about David Smith, the Third?

21 A Do not know.

22 Q You don't know.

23 How about Michael Hubbard?

24 A I do not know.

25 Q Now, just prior to -- and I'm sure your attorney has

1 explained this to you -- that there's an issue of
2 functionality in this case.

3 But, I want to just dwell on that briefly.

4 Let me do this:

5 MR. TERENCE J. LINN: Would this be a good
6 time for a bathroom-break?

7 MR. DILLIS V. ALLEN: Sure. Anytime. Go
8 ahead.

9 MR. TERENCE J. LINN: I apologize. I let it
10 go this long.

11 MR. DILLIS V. ALLEN: Take your time.

12 (FOLLOWING A BRIEF RECESS

13 THESE PROCEEDINGS WERE HAD:)

14 MR. DILLIS V. ALLEN: Let's go back on the
15 record.

16 BY MR. DILLIS V. ALLEN:

17 Q Now, Mike Hubbard, Mr. Kintzele -- is he a Graduate
18 Engineer?

19 A Not to my knowledge.

20 Q Do you know what his background is?

21 A He's a Chemist here.

22 So -- I know he has -- at least some Chemistry
23 background.

24 Q Not Chemical Engineering, though?

25 A I couldn't answer that.

1 Q Okey-doke.

2 All right. Let's try this.

3 Let's try this document, which we're going to mark
4 as Exhibit 10.

5 MR. TERENCE J. LINN: Do you want it marked?

6 MR. DILLIS V. ALLEN: Yes, sir.

7 **(WHEREUPON, DOCUMENT WAS**

8 **MARKED FOR I.D. AS**

9 **DEFENDANT'S NO. 10.)**

10 THE REPORTER: Number 10.

11 MR. DILLIS V. ALLEN:S: That's why I'm
12 going to do all these Exhibits last, so we don't
13 waist a lot of time.

14 MR. TERENCE J. LINN: Okey-doke.

15 MR. DILLIS V. ALLEN: Have you already
16 marked this, Mr. Olmsted, as Exhibit 10?

17 MR. TERENCE J. LINN: Yes.

18 THE WITNESS:

19 A Yes. Exhibit 10.

20 BY MR. DILLIS V. ALLEN:

21 Q I also made this really crude sketch that's attempting
22 to depict the Firestone Exhibit 4, and the AS Holdings'
23 Exhibits 1 and 2.

24 And, I have applied at 22, 23 and 24, a sketch in
25 a clamp that one of these in any given installation

1 would clamp the pipe boot to a pipe that runs up the
2 center of the pipe boot.

3 Are you familiar with the way these pipe boots
4 work?

5 A Generally, yes.

6 Q Okay.

7 Now, there's been some discussion in this case
8 that the ribs, 18, 19 and 20, hold the clamp in place.

9 MR. TERENCE J. LINN: Okay. I just want to
10 interpose an objection --

11 MR. DILLIS V. ALLEN: I haven't finished.

12 MR. TERENCE J. LINN: Oh, I'm sorry.

13 Go ahead. I'm not going to interrupt.

14 BY MR. DILLIS V. ALLEN:

15 Q Now is it true that the ribs 18, 19 and 20, hold the
16 clamp in place?

17 MR. TERENCE J. LINN: Again, I just want to
18 interject an objection on the record that this is
19 a representation being made by Mr. Allen that this
20 is some sort of drawing that has a relationship to
21 pipe boots without any representations that it is
22 dimensionally accurate or accurate in the way it
23 actually looks.

24 And, I don't think that there's any
25 representation being made that 22, 23 and 24 are

1 at all accurate as to their size or to their
2 location with regard to the ribs.

3 That said, to the extent that Exhibit 10 is
4 helpful to you for purposes of answering
5 Mr. Dillis' (sic) questions -- you can use it.

6 MR. DILLIS V. ALLEN: "Allen."

7 MR. TERENCE J. LINN: "Mr. Allen." Sorry.

8 MR. DILLIS V. ALLEN: That's okay.

9 THE WITNESS: Okay. Could you repeat the
10 question, please?

11 MR. DILLIS V. ALLEN::

12 Q Yeah.

13 My question is: Do you need the ribs, 18, 19 and
14 20, to hold the clamp in place, or not?

15 A My understanding is that the ribs, 18, 19 and 20, are
16 beneficial in holding the clamp in place.

17 Q Okay.

18 Now, instead of positioning the clamps 22, 23 and
19 24, over or against the ribs, 18, 19 and 20, can you
20 position them spaced downwardly from the ribs as
21 they're shown in Exhibit 10?

22 MR. TERENCE J. LINN: And, again, I will
23 enter the same objection with regard to Exhibit
24 10.

25 There's no representation that that

1 dimension or size of the supposed clamp is
2 anywhere in relation to reality.

3 And, whether that clamp has the ability to
4 be spaced out.

5 That said, go ahead and answer.

6 THE WITNESS:

7 A My experience has been that the clamp itself takes up
8 almost the entire area -- step.

9 So that the -- I'm not sure that it's possible to
10 position it lower down.

11 I think this acts as a cap to keep the clamp from
12 sliding up (Indicating).

13 MR. TERENCE J. LINN: And, let the record
14 reflect that the witness was pointing to the rib
15 as the item that acts as a cap.

16 MR. DILLIS V. ALLEN:S

17 Q Well, do you know what the vertical height of the clamp
18 is, made by AS Holdings?

19 A AS Holdings does not make any clamps.

20 We purchase them.

21 Q Well, I'm assuming you purchase them.

22 But do you know what the vertical height of the
23 clamps you purchased is?

24 A Not without referencing one.

25 Q Okay.

1 I kind of asked this question before but I want to
2 rephrase it.

3 Did you ever consider any pipe boot designs for
4 your large pipe boots other than the Firestone Exhibit
5 4 (Indicating)?

6 A I did not.

7 Q Who did?

8 A I don't know.

9 I just know that I did not consider a different
10 design.

11 Q Why couldn't you have designed your large pipe boots in
12 the same fashion as Exhibit 5, Firestone, that has no
13 horizontal steps?

14 A Well, I can't answer that for certainty because I'm not
15 an installer of pipe boots.

16 But, what I -- as a lay-person -- see as the
17 benefits to this boot is: The fact that these
18 pronounced ribs help hold the clamp on so it doesn't
19 slide up over the top.

20 And, the shape of this is such that because it's
21 angled it allows it to be pulled over these large
22 pipes, so you don't have a lot of surface area rubbing
23 against the pipe as you're trying to pull it down over
24 the pipe (Indicating).

25 Q Well, the arcuate ribs are in Exhibit 5, so that's not

1 relevant to my question.

2 My question is: Why could you design Exhibit 4,
3 without these horizontal steps that are identified in
4 Exhibit 9 and 12, 14 and 16?

5 A Again -- from a lay-person's stand-point -- without
6 having actually installed any of these before, it
7 seemed intuitive to me that the step provides less
8 slop, so as you were ratcheting the clamp down, you
9 don't have as much material in there that gets bunched
10 up and prevents the good seal.

11 Q Could you repeat that again?

12 So, -- I'm not really following you.

13 A My understanding -- without ever actually having
14 installed any of these is that: The steps allow the
15 material to fit closer to the pipe (Indicating).

16 So, that as you're tightening the clamp and
17 pulling in this material, it doesn't bunch up in a
18 situation like that (Indicating), that would allow
19 moisture to get down in between the boot and the pipe.

20 Q Well, are you aware that when the installer installs
21 this pipe boot that he makes a cut line directly above
22 the rib so that the horizontal surface is eliminated
23 before installation?

24 Are you aware of that?

25 A I am not.

1 Q Okay.

2 Does AS Holdings have a Marketing Plan for these
3 pipe boots?

4 A Not to my knowledge.

5 Q Do you have a customer-base for these pipe boots?

6 A Not at this time.

7 Q Besides the Firestone pipe, are you aware of any other
8 competitive pipe boots and how they are configured?

9 A I am not.

10 Q Why exactly are you going into this business if you
11 don't know anything about it?

12 MR. TERENCE J. LINN: Objection.

13 Argumentative.

14 MR. DILLIS V. ALLEN: (No audible response).

15 MR. TERENCE J. LINN: Is that your
16 characterization that he knows nothing about this
17 business?

18 MR. DILLIS V. ALLEN: I didn't characterize
19 it.

20 It was a question.

21 MR. TERENCE J. LINN: Could you read the
22 question back, please.

23 (Question read by reporter.)

24 MR. TERENCE J. LINN: That's -- the same
25 objection.

1 Argumentative. Represents he doesn't know
2 anything about this business. And false
3 characterization.

4 MR. DILLIS V. ALLEN: But it is a question,
5 though.

6 MR. TERENCE J. LINN: Well, it is a question
7 but it's a false characterization of the
8 statements --

9 MR. DILLIS V. ALLEN: Well, you have no
10 objection to that part of it.

11 MR. TERENCE J. LINN: I'm now entering my
12 objection.

13 Go ahead and answer it.

14 THE WITNESS:

15 A Read that question one more time, please.

16 Or repeat it?

17 (Question read back by
18 reporter.)

19 MR. DILLIS V. ALLEN: Okay.

20 THE WITNESS: I don't know. I couldn't
21 answer that.

22 BY MR. DILLIS V. ALLEN:

23 Q Could David Smith answer that?

24 A You could ask him.

25

1 Q I will.

2 (PAUSE IN THE PROCEEDINGS.)

3 BY MR. DILLIS V. ALLEN:

4 Q Let me go back: When is the first time or date that
5 you purchased pipe boots from Firestone for resale?

6 Do you have a date for that?

7 A I do not.

8 Q Approximately?

9 A I couldn't even ballpark --

10 Q Let me try to refresh your memory.

11 The decision to go into the pipe boots business
12 was made June 23, 2006.

13 Were you selling Firestone pipe boots prior to
14 that date?

15 A I believe so.

16 Q Okay.

17 So, is it accurate to say then that the motivation
18 for going into the pipe boot business was the Firestone
19 design?

20 A I'm not sure I understand your question.

21 Q Well, I'm saying: You like the Firestone design well
22 enough to adopt it to go into the pipe boot business.

23 A I'm not entirely sure I understand your question.

24 But, the Firestone design had the functional
25 properties that enable it to be apparently successful

1 in the market-place.

2 Q But you never sold very many of these pipe boots?

3 A Correct.

4 Q So, why do you think the Firestone design is
5 commercially successful if you weren't successful in
6 reselling them?

7 A Well, you can probably get that information from David
8 Smith when you depose him.

9 Q But you don't have an answer to that?

10 A I can speculate.

11 But I am not sure -- he makes the sales-calls.

12 Q So, is it accurate to say that David Smith, Jr, is
13 basically a salesman?

14 A No. I wouldn't say that's an accurate
15 characterization.

16 He's -- as the owner of the Company he is involved
17 in most facets of the Company.

18 Not strictly Sales.

19 Q But is his background in Sales?

20 A His background is as a business owner.

21 Sales is one of the areas in which he focuses.

22 Q Okay.

23 I want to talk about Tim Larson. Are you familiar
24 with him?

25 A I know Tim.

- 1 Q What does he do here?
- 2 A Tim is no longer employed here.
- 3 Q He's not?
- 4 A Correct.
- 5 Q Since when?
- 6 A I can't tell you exactly.
- 7 Q This year?
- 8 A I couldn't tell you that, either.
- 9 Q Last year?
- 10 A It was either 2007 or 2008.
- 11 I'm not sure when his termination date was.
- 12 Q Do you know what his background was?
- 13 A His background was -- what he did for us?
- 14 Q Yes?
- 15 A He was hired as a salesman.
- 16 Q Do you know what Company he worked for prior to coming
- 17 to AS Holdings?
- 18 A I know who he worked for immediately before working for
- 19 Alpha.
- 20 Q What Company is that?
- 21 A GAF.
- 22 Q G-A --
- 23 A "F" as in "Frank."
- 24 Q It is not G-A-P.
- 25 It's GAF?

1 A GAF as in "Frank."

2 Q Do you know what that acronym stands for?

3 A I do not.

4 Q Do you know what he did for GAF?

5 A I do not.

6 MR. DILLIS V. ALLEN: Now, if I could go off
7 the record for a second.

8 MR. TERENCE J. LINN: Go ahead.

9 (Whereupon, a discussion was
10 held off the record.)

11 MR. DILLIS V. ALLEN:

12 Q Did Tim Larson participate in any way in the pipe boot
13 project?

14 A If you could define "participate" I could probably
15 answer that better.

16 Q Well, did he do anything?

17 Do any work at all on the pipe boot project?

18 A It was Tim's job to sell pipe boots.

19 Q But you never sold any?

20 A Correct.

21 Q So what was his job?

22 A Sell pipe boots -- among other products.

23 That's just one of the many products we offered,
24 but associated with the pipe boots he was supposed to
25 be selling them.

1 Q I see.

2 What was the reason for his termination?

3 A Lack of Sales.

4 Q Now, are you familiar with what this Company, GAF,
5 does?

6 A In general.

7 Q What do they do?

8 A They are a building supplier.

9 They supply membranes and various products for
10 commercial building, for the most part.

11 Q Does AC (sic) Holdings make membranes?

12 A I'm not familiar with "AC Holdings."

13 Q Or "AS Holdings"?

14 I'm sorry.

15 A We do not make any membranes.

16 Q Do you know whether or not GAF makes pipe boots?

17 A I don't know the answer to that.

18 Q Did you know that Tim Larson sold pipe boots for GAF?

19 A I don't know that to be the case.

20 Q Who would know that?

21 A Tim Larson.

22 Q Who hired him?

23 A David Smith, Jr.

24 Q The President?

25 A Yes.

1 Q So you've never discussed with David Smith, Jr. why he
2 hired Tim Larson?

3 A I wouldn't say -- I wouldn't characterize it as that.
4 We may have had discussions as to why he was hired.

5 Q What were they?

6 A To increase Sales.

7 Q But, when was he hired?

8 A I couldn't answer that with certainty.

9 Q But was he hired because he sold pipe boots for GAF?

10 A No.

11 Q All right.

12 A He was hired to sell Alpha's entire basket of products.
13 Of which pipe boots are just one.

14 Q Do you know where GAF is located?

15 A They're headquarters is in Wayne, New Jersey.

16 Q Did you know that Portals Plus sells pipe boots to GAF?

17 A I did not know that.

18 Q You didn't?

19 A (No audible response.)

20 MR. TERENCE J. LINN: Is there a question
21 pending? Was that a question?

22 MR. DILLIS V. ALLEN: No.

23 MR. TERENCE J. LINN: Okay.

24 MR. DILLIS V. ALLEN: It's an inappropriate
25 statement.

1 MR. TERENCE J. LINN: Okay.

2 (PAUSE IN THE PROCEEDINGS.)

3 BY MR. DILLIS V. ALLEN:

4 Q Are you aware of a Confidential Disclosure Agreement
5 between Portals Plus and GAF?

6 A I am not.

7 Q Who is "Steve Rusincivitch" (phonetic)?

8 If I'm pronouncing that right.

9 A If it's "Rusincovitch"?

10 Q "Rusincovitch."

11 A Okay.

12 Q How do you spell that?

13 A R-U-S --

14 Q Wait-wait-wait.

15 R-U-S...?

16 A -- I-N-C-O-V-I-T-C-H.

17 Q So, I had it spelled wrong.

18 Who is he?

19 A Former CFO of Alpha.

20 Q So you have taken Steve Rusincovitch -- I still don't
21 think I have it spelled right -- you have taken his
22 job?

23 A Correct.

24 Q Okay.

25 THE REPORTER: Could you spell that one more

1 time?

2 THE WITNESS: R-U-S-I-N-C-O-V-I-T-C-H.

3 MR. DILLIS V. ALLEN: There's no "O" between
4 the "N" and the "C"?

5 Re-sin-o-covitch (Phonetic)?

6 THE WITNESS: No. No.

7 N-C.

8 BY MR. DILLIS V. ALLEN:

9 Q Rusincovitch?

10 A Yes.

11 Q Okay.

12 Does he have a middle initial?

13 A I don't know what it is.

14 "J"?

15 I believe it's "J."

16 Q Okay.

17 I'm big on initials.

18 MR. DILLIS V. ALLEN: All right. I want to
19 wind this down.

20 BY MR. DILLIS V. ALLEN:

21 Q I'll hand you a bunch of documents here that we'll call
22 Group 11.

23 **(WHEREUPON, DOCUMENT WAS**
24 **MARKED FOR I.D. AS**
25 **DEFENDANT'S NO. 11.)**

1 BY MR. DILLIS V. ALLEN:

2 Q And, these are -- I don't know how many page is there,
3 maybe 12 or 15, that your Counsel has produced.

4 A (Indicating).

5 Q And, they can be identified as a Group Exhibit 11.

6 THE REPORTER: Number 11.

7 MR. DILLIS V. ALLEN: Okay.

8 BY MR. DILLIS V. ALLEN:

9 Q Now, Group 11.

10 Mr. Kintzele, I ask that you go through these
11 documents -- I'm not going to go through them one at a
12 time, because it's unnecessary -- but I want you to,
13 number one, identify, tell us that you can identify all
14 those -- all the documents in there.

15 And, also, to testify as to when and what tooling
16 in those documents was shipped to AS Holdings from
17 Maple Mold.

18 A (Indicating).

19 MR. DILLIS V. ALLEN: Take your time,
20 please.

21 A (Indicating).

22 THE WITNESS: Okay. Okay.

23 BY MR. DILLIS V. ALLEN:

24 Q Are you identify all those documents?

25 A I flipped through them.

1 What do you mean by "identify"?

2 Q Well, I mean, have you seen the documents is what I
3 mean when I say "identify."

4 A I believe I've seen most of these documents.

5 These look like the documents that were actually
6 sent to you.

7 Q Well, they are.

8 A Okay.

9 Q But, do those documents relate specifically to the
10 tooling for Exhibit, 1, 2 and 3?

11 A Some of the documents do.

12 Q What do the other documents relate to?

13 A Some of the other documents relates to raw-materials
14 and communications with customers, packaging, clamps.

15 Here's a bill-of-lading.

16 Q Okay.

17 MR. DILLIS V. ALLEN: Did the Reporter mark
18 that?

19 MR. TERENCE J. LINN: Yes.

20 MR. DILLIS V. ALLEN: Okay.

21 I have copies of that.

22 MR. TERENCE J. LINN: Okay.

23 I just want to make sure it was clamped so
24 they don't fall all over.

25 MR. DILLIS V. ALLEN: The next one is not

1 clamped.

2 BY MR. DILLIS V. ALLEN:

3 Q I'm going to hand you a bunch of brochures that
4 we'll -- eventually we'll mark as Group Exhibit 12.

5 A (Indicating).

6 Q And, ask you if you've seen those documents in the
7 past?

8 A Okay.

9 Do you want these marked? Or do you want me to
10 look at them?

11 MR. DILLIS V. ALLEN: Either way. I don't
12 care. It a Group Exhibit he can mark it.

13 THE WITNESS: (Indicating).

14 **(WHEREUPON, DOCUMENTS WERE**
15 **MARKED FOR I.D. AS**
16 **DEFENDANT'S NO. 12.)**

17 (PAUSE IN THE PROCEEDINGS.)

18 (Documents tendered to witness.

19 THE WITNESS: Thank you.

20 BY MR. DILLIS V. ALLEN:

21 Q Mr. Kintzele, do you see -- well, first of all, all
22 these brochures are Portals Plus pipe boots.

23 Is that correct?

24 A I mean --

25 Q As opposed to being made by some other Company?

1 A I'm not sure.

2 It looks like this was a bunch of print-outs from
3 the Portals Plus Web-site, so I guess.

4 Q You have been on their Web-site?

5 A I have been on their Web-site.

6 Q When is the first time you went on their Web-site?

7 A I don't know the answer to that.

8 Q '07, '06, '05.

9 The first time?

10 A I don't know, '07 or '08.

11 Q So you have got the tooling in March of '07. Did you
12 see any of those brochures before you got the tooling?

13 A (No audible response.)

14 MR. TERENCE J. LINN: I object to the
15 characterization of "brochures."

16 But, go ahead and answer.

17 THE WITNESS:

18 A To my knowledge, no.

19 BY MR. DILLIS V. ALLEN:

20 Q So the only pipe boots that you are aware of prior to
21 March, '07, are the two Firestone pipe boots, Exhibit 4
22 and 5.

23 Is that an accurate statement?

24 A Those are the only two pipe boots I can recall seeing,
25 yes.

1 Q Okay.

2 Now, as you go through the -- and I'm not going to
3 go through every page of it -- but as you go through
4 the Portals Plus brochures that came supposedly from
5 their Web-sites, are any of them constructed in the
6 same way as the Firestone Exhibit 4 and 5?

7 A (Indicating).

8 (PAUSE IN THE PROCEEDINGS.)

9 THE WITNESS:

10 A Do you mean do any of these have a similar appearance
11 to the Exhibits 4 and 5?

12 BY MR. DILLIS V. ALLEN:

13 Q Right.

14 A (Indicating).

15 (PAUSE IN THE PROCEEDINGS.)

16 THE WITNESS:

17 A I don't know about -- they look similar.

18 There are some in here that look similar.

19 BY MR. DILLIS V. ALLEN:

20 Q Very similar?

21 A Well, okay.

22 I guess "similar" is "simular."

23 I'll say they look similar.

24 It's hard to tell. These pictures are somewhat
25 grainy.

1 MR. DILLIS V. ALLEN:

2 Q In the tooling invoice from Maple Mold the small tool
3 is described as being a 9-inch, and the large tool is
4 described as being a 13-inch.

5 And what do those dimensions refer to?

6 A I believe that refers to the stand across the bottom
7 (Indicating).

8 I would have to get a tape measure to verify that.

9 Q Because if you look at Exhibit -- Exhibit 1 and 2,
10 they're not 13 inches tall, are they?

11 A Correct (Indicating).

12 MR. TERENCE J. LINN: Would this be an
13 appropriate time to take another quick break?

14 MR. DILLIS V. ALLEN: Whatever you want.

15 MR. TERENCE J. LINN: Let's take another
16 quick break.

17 (FOLLOWING A BRIEF RECESS

18 THESE PROCEEDINGS WERE HAD:)

19 BY MR. DILLIS V. ALLEN:

20 Q Now, I want you to look at -- is the first page 432?

21 MR. TERENCE J. LINN: Which exhibit are you
22 looking at, sir?

23 MR. DILLIS V. ALLEN: Twelve, group.

24 MR. TERENCE J. LINN: Group 12 or Group 11?

25 MR. DILLIS V. ALLEN: Twelve.

1 MR. TERENCE J. LINN: Okay.

2 THE WITNESS:

3 A My first page is 525.

4 MR. DILLIS V. ALLEN: It is?

5 MR. TERENCE J. LINN: 525.

6 THE WITNESS:

7 A Here's 432.

8 They might just be out of order.

9 That's my third page.

10 MR. TERENCE J. LINN: Well, there's gaps.

11 MR. DILLIS V. ALLEN: Okay.

12 MR. TERENCE J. LINN: Actually 432 is the
13 third page in the group. And then it runs on from
14 432 on.

15 MR. DILLIS V. ALLEN: Well, mine are
16 numbered consecutively.

17 MR. TERENCE J. LINN: You've got these two
18 pages that are stuck in the front (Indicating) of
19 the exhibit group (Indicating).

20 MR. DILLIS V. ALLEN:S: Okay.

21 (PAUSE IN THE PROCEEDINGS.)

22 BY MR. DILLIS V. ALLEN:

23 Q Can you find 432 for me?

24 A I have it.

25 Q Okay.

1 Now, is the pipe boot depicted there very similar
2 to Exhibit 1, 2 and 4?

3 A That pipe boot does look similar.

4 Q Okay.

5 Let's go to 435, the upper right hand/corner?

6 A Okay.

7 Q Does that pipe boot look very similar to Exhibits 1, 2,
8 4?

9 MR. TERENCE J. LINN: Are you talking about
10 the picture in the upper right hand/corner that
11 says "Medium pipe boot"?

12 MR. DILLIS V. ALLEN: Right.

13 THE WITNESS:

14 A It does look similar.

15 BY MR. DILLIS V. ALLEN:

16 Q All right.

17 MR. DILLIS V. ALLEN: This one's not -- we
18 didn't mark this one. I don't see a Bates
19 number on this one -- oh, here, 454.

20 THE WITNESS: Okay.

21 MR. TERENCE J. LINN: We'll get it here
22 (Indicating).

23 BY MR. DILLIS V. ALLEN:

24 Q Upper right/hand corner?

25 A Your right.

1 Okay.

2 Q Upper right/hand corner.

3 That is very similar to Exhibits 1, 2, 4?

4 MR. TERENCE J. LINN: Again, that's the
5 picture in the upper right that's referenced as
6 "Medium pipe boot."

7 MR. DILLIS V. ALLEN: Right.

8 THE WITNESS:

9 A It does look similar.

10 BY MR. DILLIS V. ALLEN:

11 Q I'm not going to belabor this.

12 We'll finish up today.

13 Okay.

14 473, upper right hand corner?

15 MR. TERENCE J. LINN: (Indicating).

16 BY MR. DILLIS V. ALLEN:

17 Q Does that look similar to Defendant Exhibits 1, 2, 4?

18 MR. TERENCE J. LINN: That's the one
19 referenced as "medium pipe boot."

20 THE WITNESS:

21 A Does look similar (Indicating).

22 BY MR. DILLIS V. ALLEN:

23 Q Okay.

24 And, 479, the upper right-hand corner. Does that
25 look similar to Defendant Exhibits 1, 2, 4?

1 A It does look similar (Indicating).

2 Q Okay.

3 All right. Enough of that.

4 Now, we're going to have another Group Exhibit,
5 Group Exhibit 13.

6 And, I'll represent to you this is a partial
7 compilation of the Patent that your Counsel has
8 provided me.

9 (Documents tendered to the
10 witness.)

11 THE WITNESS: Thank you.

12 MR. DILLIS V. ALLEN: And, I'm going to ask
13 that they are marked Defendant Exhibit Group
14 Exhibit 13.

15 (WHEREUPON, DOCUMENT WAS
16 MARKED FOR I.D. AS
17 DEFENDANT'S NO. 13.)

18 MR. DILLIS V. ALLEN: If you need a rubber
19 band.

20 THE REPORTER: Number 13.

21 BY MR. DILLIS V. ALLEN:

22 Q Mr. Kintzele, would you please go through those Patents
23 and tell me whether you've seen them before?

24 A (Indicating).

25 I've flipped through here.

1 If you are asking me if I have a recollection of
2 looking at all these before, I'd say my answer is: I
3 don't recall looking at all these before.

4 Q You mean all -- have you looked at half of them or...?

5 A I've probably thumbed through some of these.

6 Q Okay.

7 Let's go to 3,807,110.

8 MR. TERENCE J. LINN: (Indicating).

9 MR. TERENCE J. LINN: These are numerical
10 order?

11 MR. DILLIS V. ALLEN:S: They're supposed to
12 be.

13 MR. TERENCE J. LINN: Okay.

14 MR. DILLIS V. ALLEN: My Secretary is
15 rebellious.

16 MR. TERENCE J. LINN: We have it in front of
17 the witness.

18 A (Indicating).

19 BY MR. DILLIS V. ALLEN:

20 Q Now, this Patent shows horizontal steps in the pipe.
21 Do you see that?

22 A Yes.

23 Q Okay.

24 But, the vertical walls are not on the
25 frusto-conical, are they?

1 A They don't appear to be.

2 Q And there's no ribs on the sides of these vertical
3 walls, are there?

4 A Doesn't appear to be (Indicating).

5 Q Okay.

6 Now, let's go to 4,211,423?

7 MR. TERENCE J. LINN: (Indicating).

8 THE WITNESS: Okay.

9 BY MR. DILLIS V. ALLEN:

10 Q Do you know who "Raymond Resech" is?

11 A I do not know who that is.

12 Q Never heard of him before?

13 A Raymond Resech?

14 Q Yes.

15 A No.

16 Q Have you looked at this Patent before (Indicating)?

17 A I may have.

18 I couldn't say -- with any certainty -- that I
19 have looked at that.

20 I may have perused it.

21 Q Well, do you know how this pipe boot works shown in
22 this Patent?

23 A No.

24 Q You don't?

25 A No.

1 Q Okay.

2 All right.

3 Let's see if we can get through this.

4 (PAUSE IN THE PROCEEDINGS.)

5 MR. DILLIS V. ALLEN: Let's look at
6 5,176,408.

7 MR. TERENCE J. LINN: We have it in front of
8 the witness.

9 MR. DILLIS V. ALLEN: All right.

10 MR. TERENCE J. LINN: I'm that quick.

11 THE WITNESS: (Indicating).

12 BY MR. DILLIS V. ALLEN:

13 Q Now, this pipe boot or --is -- Pedersen calls it
14 "seal."

15 If you look at Fig. -- Fig. 5 --

16 MR. TERENCE J. LINN: Do you mind if I
17 assist the witness in getting there?

18 MR. DILLIS V. ALLEN: Not at all.

19 MR. TERENCE J. LINN: Okay (Indicating).

20 THE WITNESS: (Indicating).

21 BY MR. DILLIS V. ALLEN:

22 Q Do you see that there is a frusto-conical pipe boot
23 that has a unidirectional frusto-conical surface as
24 opposed to being "stepped"?

25 A I'm not sure what all that means.

1 But, it looks like a two-dimensional pyramid.

2 Q Yes, it does.

3 Now, the -- if you go back to the front page of
4 the Patent --

5 A (Indicating).

6 Q -- you'll see that there are grooves, 11, 14, and 18 --
7 and I'll represent to you that those are cutlines where
8 the installer cuts it.

9 I'm referring to -- let's see here.

10 I don't want to belabor this.

11 (PAUSE IN THE PROCEEDINGS.)

12 BY MR. DILLIS V. ALLEN:

13 Q I'm reading from column five of the Patent.

14 It says, "...Spaced along the tapered portion 18
15 are a plurality of external circumferential ridges
16 14..."

17 That's in column five, beginning line 37.

18 "...Denoting where the sleeve may be cut off to
19 suit larger elongated members of different
20 diameters..."

21 Do you see where it says that?

22 A I do.

23 Q Okay.

24 Now, why didn't you adopt the Pedersen design
25 instead of the Firestone design?

1 MR. TERENCE J. LINN: I'm going to object on
2 -- to the question to the extent you're asking him
3 questions about this Patent.

4 There is no background foundation laid that
5 this gentleman has any experience or background
6 for reading or analyzing the Patents.

7 And, in particular, this Patent, as to
8 whether or not his background with regards to
9 review of this Patent.

10 Subject to that objection, go ahead and
11 answer the question to the extent you can.

12 THE WITNESS:

13 A Well, I've never seen this boot before (Indicating) to
14 try and evaluate it on the merits of why it is or isn't
15 as good a product as the Firestone boot.

16 So, I guess I can't answer that.

17 BY MR. DILLIS V. ALLEN:

18 Q Okey-doke.

19 The Bravo 5,826,919.

20 MR. TERENCE J. LINN: (Indicating).

21 BY MR. DILLIS V. ALLEN:

22 Q Do you see the issue date of this Patent, Mr. Kintzele?

23 A October 27, 1998.

24 Q Do you know when, approximately, Portals Plus began
25 making pipe boots that are similar to the Firestone

1 Exhibit 4, type boot?

2 A I --

3 MR. TERENCE J. LINN: Objection as to facts
4 not in evidence.

5 There's no indication that Portals Plus in
6 fact makes pipe boots similar to the one on the
7 table, as opposed to testimony regarding Internet
8 listing.

9 Subject that a objection, you can go ahead.

10 THE WITNESS:

11 A Subject to that objection, I do not know when Portals
12 Plus began making pipe boots.

13 BY MR. DILLIS V. ALLEN:

14 Q Does anybody in this Company know when Portals Plus
15 began making pipe boots?

16 A I do not know the answer to that.

17 MR. DILLIS V. ALLEN:: Let's get out of
18 here.

19 MR. TERENCE J. LINN: All right. I've just
20 got a question.

21 You are passing the witness?

22 MR. DILLIS V. ALLEN: Yes.

23

24 **CROSS EXAMINATION**

25 MR. TERENCE J. LINN:

1 Q Mr. Kintzele, I have got one or two follow-up questions
2 based on the questioning by Mr. Allen.

3 I want to place before you what is previously
4 marked as physical Exhibit Number 2, and physical
5 Exhibit No. 1?

6 A (Indicating).

7 Q As well as the corresponding photographs of Exhibits 8
8 and 7?

9 A (Indicating).

10 Q Okay.

11 Is there anything in those Exhibits, any indicator
12 that you see, that indicates the source or Company from
13 which those products come?

14 A We have a name-plate on both boots.

15 Q Could you explain what that is?

16 A It is a plate that is built into the tool that has our
17 name on it.

18 Q And in the case of Exhibit 1 and 2, what is the name
19 plates there?

20 A "Alpha Systems EPDM" on both exhibits.

21 Q Okay.

22 Is that the legend that's located right next to
23 the exhibit sticker in Exhibit 1 and 2?

24 A Correct.

25 Q And Exhibit 8, it's difficult to see that in the

1 photograph, but is that -- tell you what:

2 Let's look at Exhibit 7.

3 A (Indicating).

4 Q Is that label visible in Exhibit 7?

5 A Barely, yes (Indicating).

6 Q In Exhibit 8, would the same label appear in the same
7 location for the white pipe boot, Exhibit 8?

8 A Well, it should -- I think that was the intention.

9 Q All right.

10 Looking at Exhibit 13, is there anything, an
11 indicator for Exhibit 3, that would indicate the source
12 of that product?

13 A We have a similar name plate, "Alpha Systems EPDM."

14 Q I'm going to place before you what's been marked as the
15 physical Exhibit Number 4.

16 Is there anything about, any indicator for Exhibit
17 4, that indicates the source or Company from which that
18 products comes?

19 A On Exhibit 4 it has a plates on the side it says "BFDP,
20 EPDM."

21 Q What does that tell you?

22 What does that legend tell you about the source or
23 origin?

24 A Bridgestone/Firestone.

25 Q Looking at Exhibit 5, is there any indicator on that

1 object that indicates to you the source or origin of
2 that product?

3 A This appears to be an engraving that says, "FBPCO."

4 Q And, what does that mean to you?

5 A "Firestone Building Products."

6 Q Now, other than those lettering templates that are
7 molded into the product itself, is there anything else
8 about these Exhibits 1, 2, 3, 4 and 5, that tells you
9 the source or Company from which these products come?

10 A No.

11 Q I'm going to show you again, on Exhibits 1, 2, 3 and 4,
12 is there any information or identifier in there that
13 indicates the manner of using, or the operation of the
14 pipe boots shown in Exhibit 1 through 4?

15 A There are instructions on each of the boots talking
16 about how to cut it.

17 On Exhibit 4, it says to cut above the rib and
18 Exhibit 3 (Indicating).

19 So does Exhibit 1.

20 And, so does Exhibit 2.

21 (PAUSE IN THE PROCEEDINGS.)

22 MR. TERENCE J. LINN: Off the record.

23 (Whereupon, following a brief
24 discussion held off the
25 record these proceedings were

1 had:)

2 MR. TERENCE J. LINN:: Why don't we do
3 these as Opposer's Exhibits -- 20 -- there's nine
4 of them, so 20 through 29.

5 And, mark it in a similar fashion in the
6 upper -- you know, so as not to obscure the image.

7 MR. DILLIS V. ALLEN: What are the numbers?

8 MR. TERENCE J. LINN: 20 through 29.

9 **(WHEREUPON, PHOTOGRAPHS WERE**
10 **MARKED FOR I.D. AS OPPOSERS'**
11 **NO's 20 THROUGH 28, AND**
12 **DOCUMENT WAS MARKED FOR I.D.**
13 **AS OPPOSERS' NO. 29.)**

14 THE REPORTER: 20 through 29.

15 BY MR. TERENCE J. LINN:

16 Q Okay.

17 I'm placing before you what's been marked as
18 Opposer's Exhibit 20.

19 A (Indicating).

20 Q Could you identify that Exhibit, please?

21 A Exhibit 20?

22 Q Yes.

23 A A picture of a pipe boot.

24 Q And what Company is the --

25 A Alpha Systems pipe boot.

1 Q Alpha Systems as shown in Exhibit 20?

2 A Yes.

3 Q Does the pipe boot shown in photograph Exhibit 20,
4 appear to be to be the pipe boot that's shown in the
5 physical Exhibit 2?

6 A Yes.

7 Q Okay.

8 I'm placing before you what's been marked as
9 Opposer's Exhibit 21.

10 Could you identify that, please?

11 A It is a photograph of cutting instructions for a pipe
12 boot from Exhibit 2 (Indicating).

13 Q I place before you what's been marked as Exhibit 22.

14 Can you identify that, please?

15 A It is a picture of Exhibit 1, Alpha System's pipe boot.

16 Q I'm sorry.

17 Did you say the pipe boot of Exhibit 1?

18 A Yes.

19 It's a photograph of Exhibit 1.

20 Q Now, in Exhibit 22 the photograph, I don't see any
21 particular wording that refers to "Alpha Systems."

22 How does the wording that appears on the physical
23 Exhibit 1 compare to the wording that appears in
24 Exhibit 2, the physical and as shown in photographs 20
25 and 21 (Indicating)?

1 A The wording -- the wording is identical.

2 Q Just a matter of the photograph didn't have enough
3 contrast to the pick it up in the light (Indicating)?

4 A Right.

5 Right.

6 Q I'm placing before you what's been marked as Opposer's
7 Exhibit 23.

8 Can you identify that, please?

9 A Exhibit 23 is a photograph of the Firestone boot that
10 is Exhibit 4.

11 Q Now, in the Exhibit 23 photograph, can you just
12 indicate what the identifying marking is that
13 references the Company that's the source of that pipe
14 boot?

15 A The plate on the side that says "BFDP."

16 Q Now, I don't have a photograph, but how does the
17 information that's shown on the -- sort of the flat
18 skirt of Exhibit 4 -- what is shown there?

19 The words?

20 A "For conduit and copper see instruction sheet."

21 And, then it says, "cut above rib."

22 With various inch markings and arrows pointing to
23 the ribs.

24 Q To your understanding what does that information refer
25 to?

1 A Locations on the boot (Indicating).

2 Q Locations on the boot where a cut should be made?

3 A Where a cut should be made.

4 Q I'm placing before you what's been marked as Exhibits
5 24 and 25.

6 A (Indicating).

7 Q Can you identify those, please?

8 A Twenty-four and 25 are photographs of Exhibit 3, based
9 on the plate that says "Alpha Systems."

10 Q Okay.

11 And, skipped over, can you identify the photograph
12 on Exhibit 26?

13 A I see that.

14 Yes.

15 Q Is it -- the photograph of Exhibit 26, compared to
16 physical Exhibit 3?

17 A They are the same.

18 Q I'm placing before you what's been marked as Opposer's
19 Exhibits 27 and 28.

20 Can you identify those, please?

21 A Exhibit 27, 28 agrees to Exhibit 5, based on the
22 engraving that says "FBPCO."

23 Q What does "FBPCO" signify to you?

24 A That this is a boot from Firestone Building Products.

25 Q When did you start work at Alpha?

1 A April of 1997.

2 Q You had indicated in your testimony that typically
3 Alpha filed a procedure where they seek review and
4 input from a Patent Attorney with regards to a new
5 product?

6 A Correct.

7 Q I'm looking only for a "Yes" or "No" answer to this
8 question:

9 In moving ahead with the project for pipe boot,
10 did Alpha follow its typical procedure for
11 attorney/review?

12 A Yes.

13 Q In terms of the various brochures of Exhibit 12, I
14 believe is what Mr. Dillis (sic), referred to in the
15 collection Exhibit 12 as:

16 Is there any indication on all of the materials of
17 Exhibit 12, that would indicate to you whether these
18 are a copies of print, advertising materials for
19 Internet advertising-materials, or some other type of
20 materials?

21 A Sorry.

22 Could you repeat that again?

23 Q I'm just asking you:

24 Exhibit 12, in glancing through this is there
25 anything in that that would indicate that these are

1 copies from a print brochure, or from an Internet
2 information, or from some other source of information?
3 A Without looking at all of them, I think that the bulk
4 of them come from -- if not all of them -- come
5 directly from the Web-site because there is a Web
6 address at the bottom of all of these -- of these
7 printed sheets.

8 I don't know about "all" of them.

9 MR. TERENCE J. LINN: No further questions.

10 MR. DILLIS V. ALLEN:S: Okay. Let's get
11 out of here.

12 MR. TERENCE J. LINN: All right.

13 MR. TERENCE J. LINN: Just to make a record,
14 Dave Smith, the President of this Company is
15 available and he has to leave at 4:00 o'clock
16 today.

17 And he's not available tomorrow, so we're
18 happy to go straight through or whatever.

19 But, we just need to terminate at 4:00.
20 He's got a customer meeting.

21 THE REPORTER: Signature?

22 MR. TERENCE J. LINN: Yes. The witness
23 will read and sign.

24 (WHEREUPON, the deposition was
25 concluded at 1:53 p.m.)

1 STATE OF INDIANA)
2) SS:
3 COUNTY OF ST. JOSEPH)
4

5 C E R T I F I C A T E

6 I, CHARLES A. OLMSTED, Certified Court Reporter,
7 and Certified by the State of Indiana and Federally
8 Commissioned, and not disqualified as specified in Rule 28
9 of the Federal Rules of Civil Procedure, do hereby certify
10 that heretofore, to-wit, on Wednesday, November 12, 2008,
11 came before me, one, CHRISTOPHER CARL KINTZELE, called as a
12 witness by the Defendant, pursuant to
13 Notice and agreement and pursuant to Federal Rule of Civil
14 Procedure 30.

15 I further certify that the said witness was by
16 me, being a duly qualified officer under the State of
17 Indiana and Federally Commissioned, first duly sworn to
18 testify to the truth, the whole truth and nothing but the
19 truth in the cause aforesaid.

20 That the testimony then given by him was by me
21 reduced to writing in the presence of said witness by
22 means of shorthand, and transcribed by means of a computer,
23 and that the foregoing is a true and correct transcript of
24 the testimony so given by him, as aforesaid.

25 And I further certify that after this deposition

1 had been transcribed in typewritten form, it was presented
2 to the witness for reading and signing.

3 I further certify that there were present as
4 counsel at the taking of this deposition Terence J. Linn,
5 Esq., of the law firm Van Dyke, Gardner, Linn & Burkhardt,
6 LLP, 2851 Charlevoix Drive SE, Suite 207 Grand Rapids,
7 Michigan 49588-8695, appearing on behalf of the
8 Plaintiff/Opposer, and Dillis V. Allen, Esq., 104 South
9 Roselle Road, Suite 101, Schaumburg, Illinois 60193,
10 appearing on behalf of the Defendant.

11 I further certify that I am not counsel for nor
12 in any way related to any of the parties hereto.

13 In testimony whereof, I have set my hand this
14 18th day of November, A.D., 2008.

15 _____
16 Charles A. Olmsted, CSR, RPR, CM,
17 Notary Public #528740
18
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	ERRATA SHEET			
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SIGNATURE PAGE

OF

CHRISTOPHER CARL KINTZELE

I hereby acknowledge that I have read the foregoing transcript, dated November 12, 2008, and that the same is a true and correct transcription of the answers given by me to the questions propounded, except for the changes, if any, noted on the attached errata sheet.

SIGNATURE _____

DATE _____

STATE OF _____)

) SS:

COUNTY OF _____)

SUBSCRIBED AND SWORN TO ME

THIS _____ DAY OF _____, 2008.

State of _____

County of _____

Notary Public _____

My Commission Expires: _____

AS HOLDINGS, INC.)
Plaintiff,) Opposition No. 91182064
-vs-) Serial NO. 76/461,157
H&C MILCOR, INC. f/k/a) Mark: Miscellaneous Design
AQUATICO OF TEXAS, INC.,) (Pipe Boot Product Design)
Defendant.)
)

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15 **INDEX OF EXHIBITS**

16	NUMBER	DESCRIPTION	MARKED/REFERRED
17		Defendant's	
18	1	White 13-inch base pipe boot with	13
19		stamping on base of "Alpha Systems	
		EPDM 1"	
20	2	Black, 13-inch base pipe boot with	13
21		stamping on base of "Alpha Systems	
		EPDM 1"	
22	3	Black, 9-inch base pipe boot with	36
23		the stamping on base "Alpha systems	
		EPDM 2"	
24	4	Black, 13-inch base pipe boot with	12
25		stamping on the bottom horizontal	
		circumference of "BFDP EPDM"	

1	INDEX OF EXHIBITS		
2	NUMBER	DESCRIPTION	MARKED/REFERRED
3	Defendant's		
4	5	Black, 9-inch base pipe boot with the stamping of "BFPCO" and "PIPE FLASHING 1/2-1-1 1/2-2-2 1/2, EPDM"	36
5	9	1-page, Hand-drawn document depicting steps on pipe boot, dated 11-12-08, Labeled "Exh A"	30
6	10	1-page, Document labeled as "Exh B", dated 11 (12 13) 08, hand-drawn diagram depicting steps of pipe boot	45
7	11	26-pages, documents marked "CONFIDENTIAL, TRADE-SECRET/COMMERCIALY SENSITIVE" from Maple Mold Technologies	126
10	12	52-pages, Portals Plus web-site print-outs	33
11	14	21-pages, purchasing specifications from Firestone Specialty Products to Alpha Systems	34
12	15	1-page, Hand-drawing of EPDM, TPO & PVC for GenFlex Mold Types by Mr. Hubbard	27
13	Opposers' Exhibits		
14	29	9-pages, Print-out of GenFlex website	111
15	30	18-pages, United State Patents of Michael J. Hubbard	113
16	31	5-pages, Firestone Technical information sheets for pipe boots and flashings	117
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1	INDEX OF EXHIBITS		
2	NUMBER	DESCRIPTION	MARKED/REFERRED
3	32	Color photograph of physical exhibit Defendant's No. 4 -	121
4		depicting with clamp	
5	33	Color photograph of Defendant's Exhibit 4, depicting with clamp	121
6	34	Color photograph depicting Defendant's physical Exhibit 2 with	122
7		clamp	
8	35	Color photograph of Defendant's physical exhibit 2 with clamp	122
9			
10	36	Color photograph of Defendant's physical Exhibit 3, depicting clamp	122
11		placement	
12	37	Color photograph of Defendant's physical exhibits 2 and 3	122
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14	38	Color photograph of Defendant's physical exhibit No. 4, with clamp	122
15		placement	
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23			
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25			

1 (WHEREUPON, the following
2 proceedings were had starting
3 at 11:34 a.m.)
4

5 MICHAEL JOHN HUBBARD

6 Called as a witness by the Defendant, Federal Rules of
7 Civil Procedure 30, notice and agreement, first being duly
8 sworn testifies as follows:
9

10 DIRECT EXAMINATION

11 BY MR. DILLIS V. ALLEN:

12 Q Mr. Hubbard, will you state your name please for the
13 record, and your home address, and your office address.

14 A Michael John Hubbard.

15 58735 State Road 15, Goshen, Indiana.

16 And the work address -- I'm not real good on that.
17 I don't know it.

18 Q Can you summarize for us your -- well, you're at this
19 location?

20 A Yes.

21 Mm-mm.

22 Q We had somebody yesterday that was not at this
23 location.

24 Could you summarize your post High School
25 Education for us?

1 A Mm-mm.
2 I went to Michigan State University.
3 Graduated with a Bachelor's in Chemistry.
4 Q Bachelor of Science in Chemistry?
5 A Bachelor of Arts in Chemistry.
6 Q "Arts"?
7 A Yes.
8 Q What year was that?
9 A 1983.
10 Q So, how old a man are you?
11 A I was born in 1960. So let's see. That would make me
12 --
13 Q Forty-eight?
14 A Forty-eight. A little bit over 48.
15 Q Okay.
16 And, could you summarize briefly for us what your
17 work-history has been?
18 A Mm-mm.
19 Q Before I say that, did you have any other degrees --
20 A No.
21 Q -- besides your Chemistry degree?
22 A No.
23 My work history?
24 Q Yes. Please.
25 A From College I went to a Company called ADCO Products

1 in Michigan Center, Michigan.

2 Where I worked as a Development Chemist.

3 THE REPORTER: Spell "ADCO"?

4 THE WITNESS: A-D-C-O.

5 THE REPORTER: Thank you.

6 THE WITNESS: And, I was there for 9 years.

7 And, in 1992 I went to GenFlex Roofing Systems.

8 THE REPORTER: Spelled?

9 THE WITNESS: G-E-N-F-L-E-X.

10 THE REPORTER: Thank you.

11 THE WITNESS: (Continuing) Which was a
12 Division of GenCorp at the time.

13 I was the Technical Manager there.

14 And, from there they got bought by Firestone.

15 And I'm here at Alpha Systems, as a Senior
16 Development Chemist.

17 BY MR. DILLIS V. ALLEN:

18 Q But, I'm a little confused.

19 GenFlex got bought by Firestone?

20 A Mm-mm.

21 Q What year was that?

22 A 2006.

23 Q And, when did you leave GenFlex?

24 A After the purchase by Firestone I had an option to go
25 to Firestone, or here, or a couple other options.

1 And I chose to come here.

2 Q Okay.

3 Now, --

4 A No matter what, I was going to have to move.

5 Q Because GenFlex didn't want you? Or what?

6 A No. They closed the Facility.

7 GenFlex is part of Firestone. So I would have had
8 to move to Indianapolis.

9 Q Oh, I see.

10 It's a different physical location?

11 A Right. I would have been in a different physical
12 location.

13 Q Okay.

14 Now, when you were working for GenFlex did they
15 make pipe boots?

16 A No -- well, actually, yes. We did make -- well, didn't
17 make them. We owned the molds.

18 We did not make pipe boots, but we owned molds.

19 Q Okay.

20 You have to explain that?

21 A We own the molds and somebody injected them for us.

22 It's pretty simple.

23 Q I'm not too smart so you're going to have to explain.

24 Did they sell them?

25 A Yeah. We sold pipe boots all the time.

1 Q And you owned the tooling. And you --

2 A And somebody else made it.

3 Q -- you subbed out to a molder the manufacture of the
4 pipe boots?

5 A Correct.

6 Q Okay.

7 What sized were they?

8 A They went from a one-inch to six-inch. Very similar to
9 these types here (Indicating).

10 Q What would a one-inch pipe boot look like?

11 A It's this top-part here (Indicating).

12 Q Oh.

13 But, that's all one pipe boot --

14 A Yes.

15 That's right.

16 Q It's not --

17 A That's right.

18 It was all one pipe boot.

19 Q Now, how many different pipe boots did they make?

20 A One for TPO, one for PVC, and one from EPDM.

21 Q Could you explain that for me?

22 A Because of the different systems types.

23 We sold a roofing system that was a TPO roofing
24 system.

25 Q TPO is "Thermo..." --

1 A "Thermoplastic olefin."

2 Q Okay.

3 A We sold a roofing system that was PVC,
4 polyvinylchloride.

5 And, we sold a roofing system that was EPDM.

6 Q Okay.

7 Now, those are different materials.

8 But, how many different configurations did they
9 manufacture?

10 A There were two different configurations.

11 Q Two?

12 A That I know of.

13 Right.

14 Q And in terms of -- could you identify that in terms of
15 the vertical height, total vertical height?

16 A I don't remember the exact vertical height right off
17 the top of my head.

18 There were specifications for that.

19 Q So, --

20 Okay.

21 So, there were only two pipe boots they made in
22 different materials.

23 Two different sizes?

24 A One size.

25 Q They were all the same size?

1 A They were all the same size for each system type.

2 Q Mr. Hubbard, you know, that's not what I'm asking you.

3 I'm asking you how many different tools did you
4 use to make these pipe boots.

5 A And, I told you --

6 Q Different sizes?

7 A There were three tools.

8 One size for each system type.

9 Q What were the sizes, those three different sizes?

10 A They were this size (Indicating). Looked like this
11 right here.

12 Q That size happens to have a 13-inch base on it?

13 A Right.

14 And, the base on the TPO and PVC was slightly
15 smaller than that.

16 MR. TERENCE J. LINN: Let the record reflect
17 the witness has been referring to Defendants'
18 Exhibit 4, the physical of that.

19 BY MR. DILLIS V. ALLEN:

20 Q So, you use different tools for each of these
21 materials?

22 A Mm-mm.

23 Q You didn't inject --

24 A You couldn't inject an EPDM pipe boot out of a
25 thermoplastic mold.

1 You have to cross-link the EPDM in the mold, so it
2 would instantly be a different tool.

3 Q I don't follow that?

4 A Well, --

5 Q I mean, for example -- wait a second.

6 A Okay.

7 Q AS has a tool to make Exhibit 1 and Exhibit 2?

8 A Okay.

9 Q Okay.

10 A Mm-mm.

11 Q And the cavities are identical?

12 A Correct.

13 Q They inject two different materials into them?

14 A Correct.

15 Q Right.

16 So you don't have to have two different tools to
17 inject two different materials in them.

18 Could you please explain why --

19 A Yes. You do have to have --

20 Q Can you explain why?

21 A In PVC it will burn.

22 PVC burns. This stuff runs like butter.

23 This is TPO.

24 Okay?

25 MR. TERENCE J. LINN: The witness is

1 referring to "Number 1" --

2 A "Number 1."

3 BY MR. DILLIS V. ALLEN:

4 Q Okay.

5 A So then a TPO runs different than a PVC.

6 And definitely different than EPDM.

7 An EPDM has to be cross-linked. On these when
8 you're doing a mold, you're cooling to get it to come
9 out.

10 On an EPDM you're actually heating the mold to
11 cross-link the rubber in the mold.

12 Okay?

13 Q Well, I follow that.

14 But, that's in the molding machine, not in the
15 cavity.

16 A You have different injection ports.

17 In PVC you're going to have different injection
18 systems than you do in that because it will burn.

19 Q Do you know what the difference between
20 "thermo-setting" and "thermoplastic molding" is?

21 A Absolutely.

22 I know the different between "thermo-set" and
23 "thermoplastic."

24 Q Mm-mm.

25 And, these materials are -- which of those two

1 classifications?

2 A This would be a thermo-set.

3 MR. TERENCE J. LINN: The witness indicated
4 Exhibit 4 --

5 THE WITNESS: "Four."

6 This would be a thermo-plast.

7 MR. TERENCE J. LINN: And the witness
8 indicated Exhibit 1.

9 THE WITNESS: This is a Thermoplastic.

10 MR. TERENCE J. LINN: And, the witness
11 indicated Exhibit 2.

12 BY MR. DILLIS V. ALLEN:

13 Q Are thermo-setting materials typically one/part or
14 two/part?

15 A I don't understand the question.

16 Q You don't understand the question?

17 A I didn't understand your question.

18 Q Whether a thermo-setting resin needs to be combined
19 with a catalyst in order to mold it?

20 A It has to be combined with a catalyst. But it doesn't
21 have to be in two parts. It could be in one part.

22 Q How could it be in one part?

23 A You can get it in a rope in one part and feed it into
24 the injection.

25 Q Do you mean the supplier would -- the supplier would

1 combine Part "A" and Part "B"?

2 A Yes.

3 And there would be a shelf-life on it.

4 EPDM takes a lot of temperature to activate it.

5 Usually you're using a sulfur/cure.

6 Q But, is EPDM a thermo-setting material?

7 A Yes.

8 MR. TERENCE J. LINN: Just -- to make sure
9 the Court Reporter gets this down:

10 Please make sure that Mr. Allen finishes his
11 question and then give it a little pause there --

12 THE WITNESS: Okay.

13 I'm sorry.

14 MR. TERENCE J. LINN: -- and, then you can
15 answer. That way we can have a clean
16 question-and-answer.

17 THE REPORTER: Thank you.

18 MR. DILLIS V. ALLEN: Okay.

19 BY MR. DILLIS V. ALLEN:

20 Q Now, can you give us a little background on your
21 work-history in the designing pipe boots?

22 A I don't have much history at all in designing pipe
23 boots.

24 Q So, you never designed a pipe boot?

25 A I've never designed a pipe boot.

1 Q Okay.

2 And, what you do -- first of all:

3 I don't want to sandbag you, but there have been a
4 lot of witnesses that say that Alpha Systems does not
5 have an Engineering Department.

6 Is that an accurate statement?

7 A That's an accurate statement.

8 Q I don't want to sandbag you.

9 A That's an accurate statement.

10 Q Okay.

11 So, could you explain to us what your duties have
12 been with Alpha Systems since you came here. I'm
13 assuming --

14 A December, 2006.

15 Q Okay.

16 So, you've been here about two years?

17 A Mm-mm.

18 Q Could you explain your duties here, please?

19 A I am to develop New Products in adhesives and sealants
20 and some plastics.

21 And, I have been doing some designing function
22 here because we don't have an Engineering Department.

23 So, whatever Engineering may be needed in a new
24 product, we fill that gap.

25 Q But is it accurate to say that since your background is

1 in Chemistry, that you're not a structural type
2 Engineer?

3 A That is accurate.

4 I'm not a Structural Engineer.

5 Q Okay.

6 Can you tell us, give us a summary of the kind of
7 products that you have designed for Alpha Systems?

8 A For Alpha Systems?

9 Q Yes.

10 A I --

11 MR. TERENCE J. LINN: Before we go there: In
12 terms of any products that are on the market, feel
13 free to talk about it.

14 THE WITNESS: That's --

15 MR. TERENCE J. LINN: If you're working on a
16 product that is a new product that has not yet
17 been introduced, we're going to need to go onto a
18 confidential record.

19 Okay?

20 So, why don't you first deal with the
21 products that maybe already out there.

22 THE WITNESS: I can't talk about anything
23 then.

24 MR. TERENCE J. LINN: Okay. Well, let's go
25 onto a Trade-Secret Confidential record.

1 And, you can talk about things that you have
2 got under development.

3 MR. DILLIS V. ALLEN: And, do you want him to
4 bind that separately?

5 You know, I don't want to -- besides the --
6 just let me just say -- and you can do this.

7 Just let me say that -- I mean -- the
8 products other than pipe boots, you don't have to
9 give any specifics for them.

10 I'm not looking for any specifics on products
11 other than pipe boots.

12 So, I don't know if it's confidential or not.

13 THE WITNESS: I would say that -- I would say
14 that those products are confidential because
15 there's a couple of them that we're trying to file
16 for Patents on them. And I would hate to have
17 this become public-record before other people --
18 before it actually hits the market.

19 MR. DILLIS V. ALLEN: Okay. We're not going
20 to go -- we don't have to go there.

21 MR. TERENCE J. LINN: Okay.

22 MR. DILLIS V. ALLEN: But, I'm just saying:
23 Let's just stick to pipe boots.

24 THE WITNESS: Okay.

25

1 BY MR. DILLIS V. ALLEN:

2 Q Are you designing pipe boots now?

3 A I have designed some compounds that were used in some
4 of the pipe boots.

5 Q The chemical compounds?

6 A Correct.

7 Q And, -- but what is the relationship to Mr. Merryman?

8 Because I understand that he also has a chemical
9 background?

10 A Mm-mm.

11 Joe is my boss.

12 Q He's your boss?

13 A Yes.

14 Q Okay.

15 All right.

16 Now, let's go back to -- let's go back to pipe
17 boots again.

18 And I understand that Alpha Systems has pipe boot
19 toolings?

20 A Mm-mm.

21 Q That they have two tools.

22 Is that accurate?

23 A I believe so.

24 I have not seen either tool.

25 Q You haven't actually seen the tools?

1 A No.

2 Q Okay.

3 And, your duties with respect to pipe boots
4 related to researching the materials, the molding
5 materials that Alpha Systems is or might want to use in
6 these pipe boots.

7 Is that accurate?

8 MR. TERENCE J. LINN: I just want to clarify.
9 You're talking about your duties while here at
10 Alpha.

11 MR. DILLIS V. ALLEN: Correct.

12 MR. TERENCE J. LINN: Okay.

13 He's limited just to Alpha.

14 MR. DILLIS V. ALLEN: Correct.

15 THE WITNESS: Yeah.

16 In pipe boots, yes, that's correct.

17 BY MR. DILLIS V. ALLEN:

18 Q My question is limited to pipe boots.

19 A The materials/side, yes.

20 Q Okay.

21 So, you did not participate in the design of
22 Exhibits 1 and 2, the Alpha System's pipe boot?

23 A That's correct.

24 Q The physical design?

25 A That's correct.

1 The mold was -- that was done before I was here.

2 Q Correct.

3 Well, that's not entirely accurate.

4 Alpha Systems --

5 MR. TERENCE J. LINN: Counsel --

6 Go ahead and finish.

7 BY MR. DILLIS V. ALLEN:

8 Q (Continuing) Alpha Systems received the tooling in
9 March of last year, '07.

10 And you started working here in December of '06 --

11 A Okay.

12 Well, --

13 MR. TERENCE J. LINN: Let him finish.

14 BY MR. DILLIS V. ALLEN:

15 Q And, so, you were employed here before Alpha Systems
16 received the tooling?

17 MR. TERENCE J. LINN: Okay. Objection. If
18 that's a statement then it's not a question. If
19 it is a question --

20 MR. DILLIS V. ALLEN: No. It's a question.

21 MR. TERENCE J. LINN: Okay.

22 THE WITNESS: Now, what was the question
23 again?

24 BY MR. DILLIS V. ALLEN:

25 Q Well, the questions was:

1 They received the tooling in March of '07, and you
2 said you were -- weren't here when the tooling was
3 designed.

4 And you were here in December of '06, which is
5 three months prior to the time that Alpha Systems
6 received the tooling.

7 So, conceivably you could have participated in the
8 design of the tooling?

9 A How long does it take to make a mold, a tool?

10 My guess is that the tooling was -- design was
11 done before I joined.

12 The tool -- they didn't receive the tools until
13 March.

14 If it was -- if there was any other design going
15 on in that period, I was not aware of it.

16 Q Okay.

17 Now, -- so you did not participate in the design
18 of the tooling?

19 A I did not, no.

20 Q Do you know who participated in the design of the
21 tooling that made Exhibits 1 and 2?

22 A No, I don't.

23 Q Okay.

24 You never asked anybody?

25 A No, I didn't.

1 Q Have you ever seen a drawing for either these
2 structures, Exhibit 1 and 2, Alpha System's pipe boots?

3 A No.

4 I've never seen a drawing.

5 Q Isn't it a little curious to you that you work for a
6 Company that is making pipe boots and they didn't have
7 any drawings?

8 A Again, this was a project that was started before I
9 started here.

10 I was working on other things.

11 Q Okay.

12 Now, do you know anything about the function of
13 pipe boots?

14 A Yes.

15 Q You do?

16 A Absolutely.

17 Q Have you ever installed one?

18 A Absolutely.

19 Many.

20 Q When did you install one?

21 A When I was at GenFlex I was on many roofs.

22 Q Oh. You were an installer?

23 A No. I was not an installer. I was the head of
24 Technology.

25 Q But why did you go out in the field and install --

1 A Tests jobs.

2 Testers. When we were trying new products I would
3 actually go out on the roofs and be part of the crew.

4 So, yes, I had installed them.

5 Q Okay.

6 So, I wonder if you could to me a favor.

7 Do you have a pen or a pencil?

8 A A pencil here.

9 Q Yeah.

10 I wonder if you could sketch for me the
11 configuration of the GenFlex pipe boot?

12 A For EPDM?

13 Q All of them.

14 A (Indicating).

15 Q And then list the EPDM and the TPO underneath the
16 sketches that you're drawing?

17 A (Indicating).

18 THE WITNESS: Again, this isn't going to be
19 to scale.

20 MR. DILLIS V. ALLEN: That's okay.

21 (PAUSE IN THE PROCEEDINGS.)

22 MR. DILLIS V. ALLEN: Do you need another
23 sheet?

24 THE WITNESS: I can probably draw it right
25 underneath (Indicating).

1 (PAUSE IN THE PROCEEDINGS.)

2 THE WITNESS: I have to get farther away so I
3 can see.

4 That will extend a little further there
5 (Indicating).

6 I'll put "EPDM" with it.

7 Okay.

8 MR. TERENCE J. LINN: Thank you.

9 THE WITNESS: Similar to that.

10 MR. DILLIS V. ALLEN: Thank you.

11 BY MR. DILLIS V. ALLEN:

12 Q So that --

13 A And, both those molds -- the three molds were made
14 before I got to GenFlex.

15 So, these were made by somebody else before I got
16 there.

17 So I started in '92. Those were already existing.

18 Q Okay.

19 Now, could you just for the record put on there
20 that these are GenFlex molds?

21 A (Indicating).

22 Q I could write it, but it's better if you do it.

23 A (Indicating).

24 Q And, could you date this sketch in the upper
25 right-hand-corner and put your name on it?

1 A I would have to know the date.

2 MR. TERENCE J. LINN: It is November 13.

3 THE WITNESS: "11-13-08" (Indicating).

4 MR. DILLIS V. ALLEN: Mr. Hubbard, could you
5 hand that to the reporter and I will ask you him
6 to mark it as an Exhibit.

7 THE WITNESS: Okay.

8 **(WHEREUPON, DOCUMENT WAS**
9 **MARKED AS DEFENDANT'S EXHIBIT**
10 **NO. 15.)**

11 (PAUSE IN THE PROCEEDINGS.)

12 BY MR. DILLIS V. ALLEN:

13 Q Now, this tooling that GenFlex -- I think you testified
14 that this tooling existed before you went to GenFlex in
15 1982.

16 Is that accurate?

17 A That's correct.

18 Q And do you know who the molder was that GenFlex used
19 for this product -- products?

20 A I can't remember the name of either of them.

21 But, I know the person who molded the EPDM was in
22 Mentor, Ohio.

23 And, I know the person that molded the TPO and the
24 PVC was in Stryker, Ohio.

25 Q And, do you know when GenFlex started making and

1 selling the EPDM and the TPO type boots?

2 A I do not know when they started selling the EPDM
3 because they were selling it before I got there.

4 And, the TPO, I can't remember the exact date.

5 Q Okay.

6 Now, in the EPDM sketch --

7 MR. DILLIS V. ALLEN: Well, I think I should
8 show that to Mr. Linn, before I question.

9 MR. TERENCE J. LINN: Thank you.

10 (Document tendered to Counsel.)

11 MR. DILLIS V. ALLEN: Okay.

12 BY MR. DILLIS V. ALLEN:

13 Q In the EPDM sketch, you show one, two, three, four,
14 five, six steps.

15 Is that how many steps there were? Or are you
16 just --

17 A I just put them on there.

18 I think there were actually -- I think there were
19 either six or seven.

20 I can't remember which.

21 Q Okay.

22 And you've shown little knobs at the top of each
23 step.

24 A Yes.

25 Q What are those knobs?

1 A They were these right here (Indicating).

2 These little rings.

3 Q The ribs?

4 A Yes.

5 MR. TERENCE J. LINN: The witness and counsel
6 were referring to Defendants' Exhibit 1.

7 MR. DILLIS V. ALLEN: Okay.

8 MR. TERENCE J. LINN: And the ribs on that
9 product.

10 MR. DILLIS V. ALLEN: Okay.

11 BY MR. DILLIS V. ALLEN:

12 Q So, do these ribs have any function?

13 A Yes.

14 They hold the clamp on.

15 Q What is the purpose of holding the clamp on?

16 A So, doesn't slide off and you get a leak at the pipe.

17 Q Okay.

18 I noticed in your TPO and PVC design --

19 A Yes.

20 Q -- there's no ribs?

21 A That's correct.

22 Q What is the reason for that?

23 A They didn't put them in and it was a problem.

24 Q The clamps were slipping off?

25 A They would slip off.

1 That was an issue.

2 Q In the field?

3 A Mm-mm.

4 Q Why didn't they change it?

5 A Never got around to it.

6 Of all the warranty claims they we had, that was
7 probably minor compared to other things.

8 Q Okay.

9 Now, I will hand you an Exhibit.

10 And, I'll represent to you that I --

11 (PAUSE IN THE PROCEEDINGS.)

12 BY MR. DILLIS V. ALLEN:

13 Q I hand you Exhibit 9, that was introduced yesterday?

14 A (Indicating).

15 Q And this is a sketch I made. It's kind of crude.

16 But I'm trying to depict, Mr. Hubbard, the
17 left-side of two pipe boots that are super-imposed on
18 each other?

19 A (Indicating).

20 Can you explain that?

21 Q Yeah. I will.

22 I'm going to explain it.

23 A Okay.

24 Q Surfaces 10, 11, 12, and dotted lines 13, and dotted
25 lines 14, and dotted lines 15, and dotted lines 16, and

1 17, is dotted lines -- are intended -- well, let me
2 just ask you a question here for a minute.

3 Maybe I should back up.

4 Are you familiar with Portals Plus"?

5 A Yes.

6 Q The Company?

7 A Yes.

8 Q And, are you aware that Portals Plus makes pipe boots
9 that are identical to Exhibits 1 and 2 here?

10 A I don't know how identical they are, but I know they
11 make pipe boots.

12 I haven't actually measured their's versus Exhibit
13 1.

14 Q Oh.

15 Well, why don't we do that.

16 Why don't we do that.

17 We'll look at -- I'm going to give you a -- an
18 Exhibit.

19 This is the Firestone product.

20 A Okay.

21 Q This is subject matter of Exhibit 4?

22 A Okay.

23 Q And, here's the specifications that Firestone gave
24 Alpha Systems?

25 A Okay.

1 Q And, I want you to read into the record the dimensions
2 off that drawing?
3 A When do I read the Portals dimensions?
4 Q Next.
5 A Okay.
6 Hor- -- which dimensions do you want?
7 The up --
8 Q Horizontal and vertical.
9 A Okay.
10 Horizontal 13-inch from edge to edge (Indicating).
11 Vertical two-inch.
12 Then a 2.75 inch.
13 A 3.5-inch.
14 Now, these are all from the bottom.
15 4.5-inch.
16 A 5.25-inch.
17 6-inch.
18 And, a 7-inch.
19 Q Now, the horizontal diameters?
20 A One-inch to 1.375-inch.
21 1 --
22 Q From the top you're reading?
23 A Yeah.
24 From the top. Do you want me to read from the
25 bottom?

1 Q Either way.

2 A Okay.

3 I'm reading from the top.

4 Q As long as you tell the reporter which way you're
5 going.

6 A 1.625 inch to 1.875-inch.

7 2-inch to 2.62-inch.

8 2.75 inch to 3.625-inch.

9 4-inch to 4.5-inch.

10 5-inch to 5.563-inch.

11 6-inch to 6.875-inch.

12 Q Okay.

13 And, I'm going to hand you Defendant's Exhibit 12,
14 which is a group exhibit of Portals Plus' catalog
15 sheets?

16 A Mm-mm.

17 MR. TERENCE J. LINN: Objection to the
18 characterization. I believe those are Internet
19 print-outs.

20 But, go ahead.

21 He can still look at the documents for
22 whatever those documents might be.

23 BY MR. DILLIS V. ALLEN:

24 Q Now, I want you to compare on Bates 433 of the Portals
25 Plus Group Exhibit, the dimensions on the Portals Plus

1 pipe boot, compared to the dimensions of the Firestone
2 pipe boots that are replicated in Exhibit 4, in front
3 of you.

4 MR. TERENCE J. LINN: Again, objection.

5 I don't know that there's a foundation, yet,
6 that the dimensions in the specifications of
7 Firestone Exhibit 14 are actually resident in the
8 physical Firestone of Exhibit 4.

9 But, to the extent you can make comparison of
10 the documents and the dimensions that are listed
11 there, go ahead and do so.

12 THE WITNESS: Correct.

13 Because I haven't actually measured that.

14 MR. DILLIS V. ALLEN: That's okay.

15 THE WITNESS: Now, what do you want me to do
16 is read these off?

17 BY MR. DILLIS V. ALLEN:

18 Q I want you to read them off, or you can tell me whether
19 they are identical, whether the dimensions of the
20 Portals Plus pipe boot are -- in that catalog are
21 identical to the thousandths of an inch in the
22 Firestone pipe boot in Exhibit 14?

23 A (Indicating).

24 (PAUSE IN THE PROCEEDINGS.)

25 THE WITNESS: Those are identical.

1 BY MR. DILLIS V. ALLEN:

2 Q Why do you suppose that is?

3 A I don't know.

4 Q Do you think Firestone copied that from Portals Plus?

5 A Do you think Portals Plus copied that from Firestone?

6 Q Portals Plus has been making these pipe boots,

7 Mr. Hubbard, since 1979.

8 How long has Firestone?

9 A I don't know that?

10 MR. TERENCE J. LINN: Objection.

11 MR. DILLIS V. ALLEN: That's okay.

12 MR. TERENCE J. LINN: If the Counsel is going

13 to start testifying we need to take a whole

14 different deposition here.

15 If you're going to ask him questions, please

16 do so, but don't testify.

17 BY MR. DILLIS V. ALLEN:

18 Q Do you know when Firestone began making these pipe
19 boots?

20 A No. No I don't.

21 Q Okay.

22 (PAUSE IN THE PROCEEDINGS.)

23 BY MR. DILLIS V. ALLEN:

24 Q All right. Let's go back to Exhibit --

25 A This one here (Indicating).

1 MR. DILLIS V. ALLEN: Let's go back.

2 MR. TERENCE J. LINN: We have got Exhibit 9,
3 in front of the witness.

4 MR. DILLIS V. ALLEN: And I'd like -- I'm
5 sorry I did that. I didn't do it to try to
6 confuse you or anything.

7 I just wanted to have some order to what I'm
8 doing here.

9 And I'm not a very orderly guy.

10 BY MR. DILLIS V. ALLEN:

11 Q But, as I said to you before, this sketch is intended
12 to replicate two different designs in just one sketch.

13 The one design is the Firestone design, and the --
14 which is also the Portals Plus design.

15 And, the other design is a conventional design --
16 a different design that is replicated in, for example,
17 Exhibit 3, or Exhibit 5 (Indicating).

18 Three, being made by Alpha Systems, and 5 being
19 made by Firestone or Portals Plus.

20 Are you aware that --

21 A All I can say is that's Firestone.

22 That was a Firestone.

23 Q I understand that.

24 But, are you aware that Portals Plus makes pipe
25 boots for Firestone?

1 A No, I'm not.

2 Q Are you aware that Portals Plus makes pipe boots for
3 GAF?

4 A No. I'm not.

5 Q Are you aware that Portals Plus makes pipe boots for
6 Johns-Manville?

7 A No. I'm not.

8 Q So, you don't know too much about the pipe boot
9 business?

10 A I know that we bought some at GenFlex from Portals
11 Plus.

12 Q You did?

13 A Yeah.

14 But, I can't say for sure they're purchasing from.

15 MR. DILLIS V. ALLEN: That's okay.

16 That's okay.

17 (PAUSE IN THE PROCEEDINGS.)

18 BY MR. DILLIS V. ALLEN:

19 Q Now, have you ever seen any of the pipe boots that
20 GenFlex purchased from Portals Plus?

21 A Yes.

22 Q And, how are they different from the Firestone pipe
23 boots in Exhibit 4 (Indicating)?

24 A I would say that they are very similar.

25 Again, I haven't measured it to know, but I would

1 say --

2 Q Outside the dimensions of the physical shape?

3 A Physical/shape is very similar.

4 Q Yes.

5 So, what you are saying is that GenFlex -- what
6 you are saying is that:

7 GenFlex purchased pipe boots from Portals Plus
8 when they had their own tooling, to two different
9 molders in Ohio, that made very similar pipe boots for
10 them, that they also sold at GenFlex.

11 Is that an accurate statement?

12 A That's an accurate statement.

13 Although, they never -- we never purchased PVC or
14 TPO, that I know of.

15 EPDM, we purchased some from Portals Plus.

16 And we purchased from the vendor in Ohio.

17 Q Okay.

18 But, can you explain to me why GenFlex would buy
19 product, pipe boots, from Portals Plus when they had
20 their own tooling and they could have made it cheaper
21 themselves?

22 A That was more of a Purchasing deal.

23 But, I would say that it might have been a
24 pricing/situation.

25 It may be that the person we had molding wasn't as

1 cheap as the Portals Plus.

2 Q Okay.

3 A So, I mean, I'm speculating that.

4 But, that was more of a Purchasing angle.

5 Q Yeah.

6 I see.

7 A Okay.

8 Were there any differences between the two boots?

9 Q That was -- I asked you that already.

10 A No. You didn't ask me that.

11 You asked me if there was a difference between
12 this boot and Portals Plus.

13 Q Okay.

14 A Now, between the GenFlex and Portals Plus they had the
15 same dimension.

16 Q They did?

17 A Correct.

18 Q So, where did GenFlex gets these dimensions?

19 A I have no idea.

20 That mold was made before I got there.

21 Q Did GenFlex have an Engineering Department?

22 A GenCorp did, yeah.

23 Q Wait-wait.

24 Who's GenCorp now?

25 A That's the Parent Company for GenFlex.

1 Q Where are they located?

2 A Akron, Ohio.

3 Q Gen --

4 A "GenCorp."

5 Q GenCorp.

6 A In '92, it was GenCorp, and then GenCorp split from
7 OmNova Solutions. In the end it was OmNova Solutions
8 which sold to Firestone.

9 And, before GenCorp was GenCorp, it was General
10 Tire. It was what the Old General Tire was before they
11 sold the tire company.

12 Q Really?

13 A Yeah.

14 Q Does General Tire still makes tires?

15 A No.

16 They sold to Continental back in the '80s.

17 Q Okay.

18 A They're still General Tires out there, but they're part
19 of Continental.

20 Q They just use the Trademark, you mean?

21 A Correct.

22 Q Yes.

23 MR. DILLIS V. ALLEN: Okay.

24 (PAUSE IN THE PROCEEDINGS.)

25

1 BY MR. DILLIS V. ALLEN:

2 Q So, let's get back to Exhibit 9?

3 A (Indicating).

4 Q And, did you follow my description of the step trying
5 to be similar to the Firestone, the Alpha Systems, 1
6 and 2, Exhibits and the Portals Plus?

7 A Mm-mm.

8 Q Okay.

9 All right.

10 Now, the cross-hatch lines defined by --
11 frusto-conical walls 11, 12 -- no.

12 11, 19, 18?

13 A What was that?

14 MR. DILLIS V. ALLEN: I'm sorry.

15 Don't put that in there.

16 BY MR. DILLIS V. ALLEN:

17 Q By walls 11, 18, 19, and 20 --

18 A Yes.

19 Q -- and, which is intended to replicate the Alpha
20 Systems design in Fig. 3, and the Firestone design in
21 Exhibit 3, and Firestone design is Exhibit 5 --
22 except -- except the frusto-conical angles
23 progressively increase from wall, 11, to wall 18, to
24 wall 19, to wall 20, so that you can achieve -- let me
25 finish --

1 A Okay.

2 Q -- so that you can achieve the step configuration of
3 the same height without increasing it up another foot?

4 A Mm-mm.

5 Q Okay.

6 A (No audible response).

7 Q Now, do you understand the difference between these two
8 designs?

9 A I believe so.

10 Q Okay.

11 Now, my question is:

12 Why couldn't Alpha Systems design the big pipe
13 boot the way it's shown in cross-hatch in Exhibit 9?

14 A The first response I have to that is that: Firestone
15 gave them a specification which shows what they wanted
16 to purchase.

17 So, they wanted to make the pipe boot to what
18 Firestone wanted to purchase.

19 That's probably the Number 1 reason, because why
20 would you make something they don't want to buy?

21 Q I see.

22 Do you have any other reasons?

23 A First -- my guess is that when you go to clamp this in
24 place (Indicating), you're probably going to have a lot
25 of puckering and buckling because the angle is going to

1 be too flat.

2 Here you have a fairly sharp angle going straight
3 up and --

4 MR. TERENCE J. LINN: Pointing to --

5 THE WITNESS: Pointing to Exhibit 5.

6 When the angle starts to come in like this,
7 you're going to start to try to pull that clamp in
8 on something that's way -- quite a distance away
9 from the pipe.

10 And, when do you that it's probably going to
11 pucker.

12 Which can cause you an area that could leak.

13 MR. DILLIS V. ALLEN: Okay.

14 BY MR. DILLIS V. ALLEN:

15 Q So -- but, are you aware that Portals Plus was the
16 first manufacturer of this frusto-conical horizontal
17 step design?

18 A No. I'm not aware of that.

19 Q Okay.

20 A I'm not sure it's true.

21 Q Well, you may be aware of it or unaware of it.

22 You don't have any knowledge one-way or the other,
23 do you?

24 A (No audible response).

25 Q Do you know when Portals Plus first started making

1 these?

2 A No, I do not.

3 Q Okay.

4 Now, going back to Exhibit 9, I have sketched in
5 three different ribs.

6 Rib 23, is -- supposedly -- semi-circular.

7 A Okay.

8 Q Rib 22 is either rectangular or trapezoidal?

9 A Mm-mm.

10 Q And rib 21, is pyramidal in cross-section.

11 Do you see that?

12 A Mm-mm.

13 Yeah. I'd see that.

14 Q And, my question to you is: Why did Alpha Systems
15 select the semi-circular cross-section 23, rather than
16 the cross-sections 22 or 21?

17 A And, again, my answer to that would be that they were
18 probably given a specification.

19 And, looks like they were probably given this
20 sample, sample Number 4, from Firestone.

21 And, they probably made what Firestone wanted to
22 purchase based on their specification.

23 Q But, let me sum this up:

24 Are you aware that Alpha Systems intends to sell
25 pipe boots to customers other than Firestone?

1 A Yes.

2 Q So, why don't they have a different design for those
3 other customers instead of the Firestone design?

4 A The idea there is, we already have a mold, so why would
5 you want to have multiple inventories?

6 Q The mold only cost \$30,000. What's the big deal?

7 A I don't know the cost of the mold.

8 Q I'm representing to you that's what it cost?

9 MR. TERENCE J. LINN: Objection. We're
10 getting argumentative here. The witness either
11 knows, or he doesn't.

12 And, I believe he said he didn't know.

13 MR. DILLIS V. ALLEN: Okay.

14 BY MR. DILLIS V. ALLEN:

15 Q Now, I'm going to hand you Exhibit 10.

16 A (Indicating).

17 The other thing I will say about Exhibit 9, is
18 that some of those other designs like the pyramid and
19 stuff, those would be hard to get out of a mold, I
20 would assume.

21 Q Why would the pyramid be hard to get out of the mold?

22 A It's got a lot of flat edges going to a point.

23 It could be hard to get out of the mold.

24 Q Okay.

25 Let's follow-up on that.

1 Do you know what the Durometer is on these pipe
2 boots?

3 A No.

4 I don't.

5 Q Why don't you?

6 A I don't know it off the top of my head.

7 Q Well, you are the guy that selects the materials.

8 Isn't the Durometer one of the major criteria that
9 you used to select the material to make a pipe boot?

10 A Maybe.

11 Q What do you mean "maybe"?

12 A Durometer is one property.

13 I would use more of tensile strength, personally.

14 Q So, a durometer is not an factor?

15 A No. It is a factor.

16 MR. TERENCE J. LINN: Well, I -- go ahead.

17 THE WITNESS: I think tensile-strength is a
18 more important factor.

19 BY MR. DILLIS V. ALLEN:

20 Q Well, it might be.

21 But, I'm saying is the Durometer an important
22 factor in making a pipe boot because it determines the
23 flexibility of the material; doesn't it?

24 A Yes.

25 But, --

1 Q Well, why don't you know the Durometer of the pipe
2 boots that were --

3 A Each one of those is different.

4 The TPO is different than the EPDM.

5 Q But, you just testified you don't know what the
6 Durometer is?

7 A I don't know.

8 But, I know it's different.

9 Q Why didn't you test the Durometer?

10 A I probably did test the Durometer.

11 Do I remember it?

12 I don't remember it.

13 Q Do you have a Durometer?

14 A Do I have a gauge?

15 Q Yes.

16 A Yes.

17 Q Where is it?

18 A In the lab.

19 Q And you don't use it?

20 A I have used it.

21 MR. TERENCE J. LINN: Objection, Counsel.

22 THE WITNESS: Can I remember it?

23 I can't remember it.

24 MR. TERENCE J. LINN: Objection.

25 Counsel, you're just getting argumentative

1 with this gentleman.

2 He's answered your questions.

3 Where the location of the Durometer meter is
4 located, and how often he uses it, strikes me as
5 relatively tertiary to the issues in this case.

6 MR. DILLIS V. ALLEN: Okay.

7 BY MR. DILLIS V. ALLEN:

8 Q Can you estimate what --

9 A I'm not going to guess at what the --

10 Q Well, let me ask you it this way:

11 Do you know what range the Durometers are of these
12 various pipe boots?

13 A I'm not going to guess at the range.

14 I would tests them first.

15 Q I mean, was it Shore A, or Shore B, or Shore C, or
16 Shore D?

17 Which is it?

18 A I'm not going to go there.

19 Q You don't know?

20 A I don't know.

21 Not off the top of my head, no.

22 Q You don't think that's important?

23 MR. TERENCE J. LINN: Objection. Asked and
24 answered.

25 He was asked -- and responded -- to that

1 question. He's reflected as to the importance or
2 the relative importance of that particular factor.

3 He said he doesn't remember it sitting here
4 today.

5 Don't keep asking him the same question.

6 We're going to be here a week.

7 BY MR. DILLIS V. ALLEN:

8 Q Okay.

9 Now, if you could refer to Exhibit 10.

10 A "Yep" (Indicating).

11 Q And, this Exhibit is intended to depict Firestone
12 Exhibit 4, and AS Holding's Exhibit 1 and 2, in the
13 Portals Plus design.

14 And I have shown the clamps, 22, 23, and 24, at a
15 space below the semi-circular ribs 18, 19 and 20.

16 A Mm-mm.

17 Q Is that an acceptable practice?

18 A The clamp usually takes up more of that space except
19 for the bottom one.

20 The clamp is going to take up quite a bit of this
21 area, more so than in this drawing.

22 But, it probably is not because you're going to
23 get that gathering of the material, again.

24 Remember that the distance away from the pipe
25 becomes greater as you go further down the cone.

1 So, as you clamp that and try to tighten that in
2 it's going to be gathering the material.

3 Q But, what would you mean by that statement?

4 That "it's going to be further away from the
5 pipe"?

6 A It's sloped.

7 The pipe -- you're cutting it to the distance of
8 the pipe here (Indicating).

9 Okay?

10 Right underneath this rib you're very close to the
11 distance of the pipe.

12 As you get further down away from the rib, the
13 distance here from the pipe boot to the pipe, which is
14 here (Indicating), becomes greater, and it's going to
15 gather the material.

16 Q Yeah.

17 But, Mr. Hubbard, doesn't it depend upon what the
18 diameter of the pipe is?

19 A Yes.

20 And, you're going cut it at the diameter of the
21 pipe.

22 Q Now, is it possible to cut this -- well, typically --
23 let me start over.

24 Typically you would cut -- the installer would cut
25 immediately above the rib.

1 Is this accurate or not?

2 A Correct.

3 Q Would the installer ever cut it on the frusto-conical
4 part below the rib if the pipe was that size?

5 A Most people would say that's not allowed.

6 Most people warranting the job say that's not
7 allowed, especially on the first piece because you want
8 to have a certain distance up the pipe.

9 Q Is there a code that regulates that?

10 A No.

11 Most people -- it's because their warranty account
12 will say there is a distance you want above the pipe,
13 especially if there was no rib.

14 So, in the first stage, definitely, we wouldn't
15 allow somebody to cut.

16 Q But let's talk about this first step here.

17 A Mm-mm.

18 Q If the pipe had a larger diameter than where you made
19 the cut-line, could you place the clamp below the rib
20 so that it's not touching the rib?

21 A I don't understand the question there.

22 Explain that to me, again?

23 MR. TERENCE J. LINN: I've got a clamp here
24 if that's of assistance to you?

25

1 BY MR. DILLIS V. ALLEN:

2 Q Yeah.

3 I'm just saying that depending upon the pipe
4 height-size could you put the clamp below the rib here
5 in certain situations?

6 A Wouldn't allow that.

7 Q Why not?

8 A It's too far down.

9 Q Well, doesn't it depend upon the pipe size?

10 A If the pipe was bigger than this right here --

11 Q Yeah.

12 If the pipe was the size of the clamp where I have
13 got it right now --

14 A I would make them field/flash it.

15 You use flashing material, they would not be able
16 to use this (Indicating).

17 Q Explain that to me?

18 A The pipe is bigger than the diameter of the --

19 Q The cuts --

20 A -- the last rib.

21 Q Yeah?

22 A And if it's bigger than the diameter of the last rib
23 they would not be allowed to use this.

24 Q Use the pipe flue or the --

25 A The pipe flue.

1 Q What do they?

2 A Field flash with uncured flashing, the old fashioned
3 way.

4 Q Could you explain that to us out of...?

5 A You have uncured EPDM.

6 You would take your adhesive, put it on the deck,
7 put it on the flashing.

8 You make a target out of it. You have to -- let's
9 say you take a square like this.

10 You take and you cut a hole --

11 Q Don't -- no-no-no. Don't draw on the Exhibits.

12 Here (Indicating).

13 A Give me a different piece-of-paper, then. I'll show
14 you exactly how to do it.

15 (Paper tendered to the
16 witness.

17 BY MR. DILLIS V. ALLEN:

18 Q Okay.

19 A What you do is you take a piece of uncured flashing so
20 it's not curred --

21 THE REPORTER: I'm sorry.

22 What -- plastic?

23 THE WITNESS: "Uncured" rubber.

24 THE REPORTER: I'm sorry.

25 THE WITNESS: Not plastic.

1 EPDM. Uncured rubber.

2 A (Continuing) You take the diameter of the pipe, let say
3 it's the pop-can (Indicating). You would actually cut
4 a hole slightly smaller than that, in this piece
5 (Indicating), and because it's uncured it will form.

6 You take that hole, you pull it down over the
7 pipe, which would cause the edges to go up onto the
8 pipe. This is the pipe (Indicating).

9 Cause the edges to go up onto the pipe slightly.
10 Like that (Indicating).

11 This is the pipe.

12 Here's the deck.

13 That's called the "target patch."

14 Then you would take another piece of uncured
15 flashing, cut it, and wrap it around the pipe this way
16 going over the top of this lip that comes up
17 (Indicating).

18 So, the pipe goes up and you have a flashed pipe.

19 That's how you do it without a pipe boot.

20 BY MR. DILLIS V. ALLEN:

21 Q Okay.

22 A That's been done since the beginning of time.

23 Q Yeah.

24 Before they had pipe boots, you mean?

25 A As long as we've had rubber roofs they have done it

1 that way.

2 Q Okay.

3 So, it is your testimony that --

4 A I can only speak for what I would have done at GenFlex.

5 What our -- we would not allow somebody to cut
6 this boot down here, first off, because the
7 distance --

8 Q No-no. That wasn't my point.

9 You missed my point.

10 A Okay.

11 Q No.

12 I'm saying you would cut the boot here
13 (Indicating).

14 You cut it above the rib.

15 But the pipe is bigger, so it has to stretch when
16 you slide it over the pipe.

17 That's my point.

18 A I think that would be very hard to do without splitting
19 the rubber.

20 I think that would be very hard to do. It would
21 be very hard to pull it over the pipe.

22 Q Well, doesn't that depend upon what the difference in
23 diameters are?

24 A Absolutely.

25 Q Yeah.

1 A But, if the pipe is big enough that you're going to
2 clamp it down here, that's going to be really hard to
3 pull that down over that pipe.

4 I have put them on.

5 Trust me. That would be a pain in the --

6 Q Oh, I trust you, yeah.

7 A -- pain in the butt to put it on the pipe.

8 Q So, the point you're making is that you always install
9 the clamp immediately below the rib?

10 A Correct.

11 Q In any installation?

12 A Correct.

13 That's the way they're supposed to install it,
14 whether the contractor went in and got it right or not,
15 but that would be a punch/list item by the Tech-Rep who
16 goes out and inspects the job.

17 Q Uh-huh.

18 A He would be told to "move it."

19 Q Okay.

20 (DISCUSSION HELD OFF THE RECORD.)

21 (WHEREUPON, following a
22 luncheon recess these
23 proceedings were had:)

24 MR. DILLIS V. ALLEN: Back on the record.

25 MR. TERENCE J. LINN: Okay.

1 BY MR. DILLIS V. ALLEN:

2 Q Now, I think you testified that GenFlex, the Company
3 you left in 2006, --

4 A Mm-mm.

5 Q (Continuing) "Yes"?

6 A "Yes."

7 THE REPORTER: Thank you.

8 BY MR. DILLIS V. ALLEN:

9 Q -- was acquired by Bridgestone/Firestone?

10 A That's correct.

11 Q Yes.

12 Now, did Bridgestone/Firestone make any pipe boots
13 prior to the acquisition.

14 Or was the --

15 A I really don't know. Because I wasn't involved with
16 their production at Firestone.

17 I was with GenFlex at that time.

18 Q Okay.

19 Then maybe I lost something.

20 You left GenFlex before Firestone made the
21 acquisition?

22 A No.

23 No. That's when I left after they -- after we got
24 bought by Firestone.

25 Q How long a period was that?

1 A A month.

2 I was paid through a temporary agency to stay on
3 for a month.

4 And, then, when the month was up I had to make a
5 decision to either go with them or come here.

6 And I came here.

7 Q Well, how did you have a contact with Alpha Systems?

8 A We had talked on projects relating to sheet projects
9 because we had lines to make products that they sell
10 here -- not pipe boots, but large sheets for like
11 roofing.

12 Q So, your familiarity with pipe boots was not your
13 motivation to come here? Or was it?

14 A No.

15 No. No.

16 Q Who hired you here?

17 A Joe Merryman.

18 Q Who?

19 A Joe Merryman.

20 Q Okay.

21 Now, are the -- or were the employees at
22 GenFlex -- they were working on the pipe boot --

23 A Mm-mm.

24 Q (Continuing) -- Marketing, Manufacturing?

25 A Mm-mm.

1 (WHEREUPON,
2 CONFIDENTIAL/TRADE-SECRET
3 TESTIMONY BEGINS.)
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18 (CONFIDENTIAL/TRADE-SECRET TESTIMONY ENDS.)

19 BY MR. DILLIS V. ALLEN:

20 Q Mm-mm.

21 Do you know the names of any of those Engineers?

22 A I don't know which Engineers did it.

23 It could have been any -- any of a bunch of them
24 because GenCorp had a lot of Engineers.

25 The "Skunkworks" Division -- they had a whole

1 bunch, yeah.

2 Q You said, "GenCorp"?

3 Or Gen --

4 A "GenFlex."

5 GenFlex is a Division of GenCorp.

6 And GenCorp did a lot of the Engineering
7 functions.

8 Q So, what -- GenCorp is a conglomerate of some kind?

9 A It was at that time, yes.

10 Q What kind of a Sales-volume did they have?

11 A Oh, God.

12 It was -- I think it was around 850 million.
13 Something like that.

14 That was after they split from the tire company.
15 I mean, I don't know exactly.

16 Q General Tire you're talking about, now?

17 A Yeah.

18 Q Not Firestone.

19 A Right. That's General.

20 But, it was GenCorp, is what I was talking about
21 there.

22 Q Mm-mm.

23 A And, then, they sold off -- they used to own Arcado
24 Studios, Penn Tennis Balls, Aero-Jet. They made rocket
25 boosters, you know, Patriot missile type stuff.

1 There were several companies.

2 Q Okay.

3 A They had an automotive division that made
4 weather-stripping for cars.

5 **(WHEREUPON, THE FOLLOWING**

6 **BEGINS**

7 **CONFIDENTIAL/TRADE-SECRET**

8 **TESTIMONY.)**

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5 **(CONFIDENTIAL/TRADE-SECRET TESTIMONY ENDS.)**

6 MR. TERENCE J. LINN: We're not going to
7 conduct an investigation for you.

8 To the extent he's got information that he
9 can answer, he'll do it.

10 But, in terms of going out and starting to do
11 research on persons --

12 THE WITNESS: I don't know who the person is
13 at Johns-Manville.

14 MR. DILLIS V. ALLEN: That's okay.

15 That's okay.

16 (PAUSE IN THE PROCEEDINGS.)

17 BY MR. DILLIS V. ALLEN:

18 Q So, has Alpha Systems started any kind of a Marketing
19 program for pipe boots?

20 A I wouldn't say a "Marketing program," as per se.

21 They've talked to people about selling them, but I
22 don't know that there's was an actual Marketing
23 program.

24 Q Whose talked to whom?

25 Somebody about selling?

- 1 A That would probably be David.
- 2 I was present at one meeting.
- 3 Q Are you talking about David, the Third?
- 4 A Younger.
- 5 The boy. "D."
- 6 I don't know what number -- which number that is.
- 7 Q Is that an acronym for the son?
- 8 A Yeah.
- 9 So...
- 10 Q "D"?
- 11 A Yeah. Because it's easier to keep them straight.
- 12 But --
- 13 Q So that's the acronym you use?
- 14 A Well, that's what I use.
- 15 So...
- 16 Q Okay.
- 17 But, is Alpha Systems presently attempting to sell
- 18 these pipe boots?
- 19 A Yes.
- 20 Q They are?
- 21 A Yes.
- 22 Q Have you sold any?
- 23 A No.
- 24 Q Why not?
- 25 A I don't know.

1 Probably going through testing.

2 **(WHEREUPON, THE FOLLOWING**
3 **QUESTION AND ANSWER IS**
4 **CONFIDENTIAL/TRADE-SECRET.)**

13 (CONFIDENTIAL/TRADE-SECRET TESTIMONY ENDS.)

14 BY: MR. DILLIS V. ALLEN

15 Q And what about --

16 A You don't just approve these things because somebody
17 hands it to you.

18 I mean, you have to go through testing and
19 everything.

20 Q I understand that.

21 A Mm-mm.

22 Q But, on that same line though, what test did you
23 conduct on the Alpha Systems prototypes to determine,
24 you know, durability or service abilities?

25 A I did not do the testing. The testing was done before

1 I got here.

2 Q And who was it done by?

3 A I'm not sure.

4 I'm assuming it was Joe, but I'm not sure.

5 Q 61.

6 Joe who?

7 A Joe Merryman, I'm assuming.

8 But I -- I wasn't here at the time so I don't
9 know.

10 Q So you have never conducted any tests on Exhibits 1 or
11 2?

12 A Which ones are Exhibits 1 and 2?

13 Q (Indicating).

14 A This is 1, this is 2 (Indicating).

15 MR. TERENCE J. LINN: (Indicating).

16 THE WITNESS: Weathering/tests?

17 BY MR. TERENCE J. LINN:

18 Q Any kinds of test?

19 A I think I've done some tensiles on them.

20 Q Tensile strength?

21 A Yes.

22 Q How do you that?

23 A You do -- take dye, you cut it out, looks like a
24 dog-bone, and you pull on it and test the strength.

25 Q Say that again?

1 A You take a die, and you have a die that's shaped like a
2 dog-bone.

3 And, you hold it on a very standard rubber dye,
4 and you cut samples out of it, and you pull it on an
5 Instron to see what the strength is.

6 Q You pull it on a what?

7 A "Instron."

8 Q How do spell that?

9 A Tensile tester.

10 A tensile tester. That's more a generic term
11 rather than an "Instron."

12 An "Instron" is somebody's trade-mark.

13 Q How do you spell "Instron", though?

14 A I-N-S-T-R-O-N.

15 Q Okay.

16 Who's that made by?

17 A Instron.

18 Q That's the name of the Company?

19 A That's the name of the Company.

20 So, if -- you use an universal tensile tester, the
21 generic term.

22 Q And, you pull it to see when it fractures.

23 And, at the point of fracture you write down the
24 pounds that it fractures at?

25 Is that how it works?

1 A Actually, you take into account the thickness and
2 width, and you write down the tensile strength.

3 So, there's a load divided by the cross-sectional
4 area.

5 Q Okay.

6 And, do you have records of those tests?

7 A I don't know where they are.

8 Q Could you look for them?

9 MR. TERENCE J. LINN: Yes. He can look if
10 he's got any of this particular product.

11 MR. DILLIS V. ALLEN: Well, we asked for
12 them.

13 MR. TERENCE J. LINN: That's what I'm saying.
14 He's look and see if he's got them.

15 **(DOCUMENT REQUEST - INDEX.)**

16 THE WITNESS: Mm-mm.

17 **(PAUSE IN THE PROCEEDINGS.)**

18 THE WITNESS: I haven't done any
19 weathering/testing, though.

20 BY MR. DILLIS V. ALLEN:

21 Q What about fatigue/testing where you cycle the product?

22 A I haven't done any of that.

23 Q You've never done a fatigue/test?

24 A I haven't.

25 That's not to say that it hasn't been done, but I

1 haven't done it.

2 Q Well, who would do it if it wasn't you?

3 A I don't know.

4 Somebody else in the lab.

5 Q Who-else is in the lab beside you and Mr. Merryman?

6 A Dave Young. That's pretty much it.

7 Q Did Dave Young do any other testing?

8 A I have no idea.

9 Q Well, who would have instructed him to do any testing?

10 A Joe Merryman would have instructed any of us to do it.

11 Q So, you're pretty familiar with pipe boots?

12 A I am.

13 Q Now, as I understand Alpha Systems has only two tools.

14 They have a 13 inch pipe boot tool and they have a
15 9-inch pipe boot tool.

16 But, are you aware that the full spectrum of pipe
17 boots includes possibly ten or more tools to make ten
18 or more different physically configured pipe boots?

19 A If you --

20 Q Or are you not familiar?

21 A If you wanted to do everything.

22 Q Right.

23 The full spectrum of pipe boots?

24 A I don't know how many tools that would be, but there's
25 quite a few different designs that I've seen.

- 1 Q Well, how many would you estimate?
- 2 A I would say at least five, that I can think of.
- 3 Q Okay.
- 4 I'm going to hand you Defendants' Exhibit 12?
- 5 A (Indicating).
- 6 Q And, I represent to you these involve Portals Plus
- 7 documents.
- 8 A Mm-mm.
- 9 Q And, I want you to go through here and count the number
- 10 of different pipe boots --
- 11 A Okay.
- 12 Q -- that Portals Plus makes?
- 13 A All right.
- 14 Q Thank you.
- 15 A (Indicating).
- 16 One, two, three, four, five, six, seven, eight.
- 17 Although, I think these are the same.
- 18 One of these are the same.
- 19 Q Well, don't repeat them.
- 20 A Okay.
- 21 Then let me start over.
- 22 I'm sorry. Because some of those are the same.
- 23 One, two, three, four.
- 24 These are all the same.
- 25 MR. TERENCE J. LINN: (Indicating).

1 THE WITNESS: (Indicating).
2 Five, six (Indicating).
3 That isn't exactly what I call a "pipe boot."
4 But, okay.
5 BY MR. DILLIS V. ALLEN:
6 Q Is that seven or...?
7 A Six.
8 Seven.
9 Eight.
10 Looks like the same ones. Those are the same ones
11 (Indicating).
12 Nine.
13 THE WITNESS: Do you want the shingle
14 flashing ones, also?
15 MR. DILLIS V. ALLEN: If it's just a generic
16 flashing. It wouldn't be a pipe boot.
17 THE WITNESS: Ten, eleven, twelve.
18 Those are the same.
19 That one is the same.
20 Thirteen.
21 That's the same.
22 These are the same as the other ones.
23 Those are the same as the other ones.
24 Those are the same.
25 That one is the same.

1 Those two are the same.

2 These are the same.

3 These are the same.

4 A lot of these documents are the same.

5 Those are all the same.

6 Those are all the same.

7 These are all the same.

8 My guess it around 13 in here without looking at
9 them all completely.

10 MR. DILLIS V. ALLEN: That's all right.

11 Q I'm not holding you to the exact number.

12 My point is that: So you have 13?

13 A Mm-mm.

14 Q So, Alpha Systems has two pipe boots?

15 A Mm-mm.

16 Q How many pipe boots did GenFlex have?

17 I mean, physically different?

18 Not materially different.

19 A Physically different?

20 Two.

21 Q Two?

22 A Two.

23 Q All right.

24 A The two that were shaped very similar to this
25 (Indicating).

1 It's probably -- well, again, that's just throwing
2 a number out.

3 But, the large percentage of jobs will be covered
4 by these two (Indicating).

5 Q Okay.

6 But this is, in fact, Exhibit 4 and whatever that
7 other number is (Indicating)?

8 A Right here?

9 Q Five.

10 MR. TERENCE J. LINN: Five.

11 BY MR. DILLIS V. ALLEN:

12 Q (Continuing) -- are, in fact, Bridgestone/Firestone
13 pipe boots.

14 Aren't they?

15 A Yeah.

16 It's says so right on them.

17 Q Right.

18 But, I mean do you recognize them as being the
19 same pipe boots that you had contact with when you are
20 with employed by GenFlex?

21 A Yes.

22 Q Or are they different?

23 A The two pipe boots would be very similar to that.

24 I don't have measurements or any of that kind of
25 stuff, but they would be very similar.

- 1 Q They could be the same?
- 2 A They could be.
- 3 Q You said there's only two?
- 4 A There's only two --
- 5 Q And you were out in the field installing these things
- 6 all the time, and intimately familiar with how the
- 7 clamp and --
- 8 A I knew how many parts numbers we had.
- 9 We had two.
- 10 Q Well are these the parts, or aren't they?
- 11 A No.
- 12 Those aren't the parts.
- 13 Those are Firestone's parts.
- 14 Q Oh.
- 15 You mean Firestone changed the tooling?
- 16 A They could have.
- 17 Because they own the Company now.
- 18 Q Well, did they or did they not?
- 19 A I don't know.
- 20 MR. TERENCE J. LINN: Objection --
- 21 THE WITNESS: That would have been after --
- 22 MR. TERENCE J. LINN: Wait.
- 23 Let me get my objection in.
- 24 You were starting off, you were talking to
- 25 him about GenFlex.

1 You started with Firestone products.

2 Then he asked about his work at GenFlex.

3 And, now you're jumping back to Firestone.

4 That's why he's having trouble marrying up
5 what products you're talking about.

6 You need to be clear as to what products, at
7 which Company you're now asking about.

8 MR. DILLIS V. ALLEN: Okay. I appreciate the
9 help, Terry.

10 MR. TERENCE J. LINN: Yes.

11 Trying to keep a clean record. It gets
12 confusing when you're both talking over each
13 other.

14 MR. DILLIS V. ALLEN: I know.

15 THE REPORTER: Thank you.

16 BY MR. DILLIS V. ALLEN:

17 Q But, are Exhibits 4 --

18 A This one is 5.

19 Q -- and 5 made from GenFlex tooling?

20 A I would guess not.

21 Q Why would you guess that?

22 Don't you know the part numbers?

23 A Those have "Firestone Building Products" on them.

24 We never put "Firestone Building Products" on a
25 GenFlex part.

1 Q Okay.

2 But, isn't it true that you can take a tool, an
3 existing tool, and take a name-plate insert out, put
4 another insert in with a different name on it, and have
5 exactly the same tool?

6 Is that possible?

7 A That's possible.

8 Q And isn't it possible that Firestone did that?

9 A Could be possible.

10 I don't know that they did that, but it could be
11 possible.

12 Q Let take it a step further.

13 Without look at these parts (Indicating), and see
14 if you recognize any GenFlex part-numbers on them?

15 MR. TERENCE J. LINN: And, you're talking
16 about Exhibit 4 and 5?

17 MR. DILLIS V. ALLEN: Four and five
18 (Indicating), yes.

19 THE WITNESS: Nope.

20 BY MR. DILLIS V. ALLEN:

21 Q Do you remember what the GenFlex parts numbers were for
22 those two part pieces?

23 A I probably don't remember the part-number, but I don't
24 see anything that looks like it, in that form.

25 Q Okay.

1 Well, you didn't look at the bottom of the base to
2 see whether the bottom or the base --

3 A It's going to hard to see the base.

4 It's got tape on it.

5 Q Why don't you take it off?

6 A I can tell you that GenFlex did not have the parts
7 number on the boot.

8 Q It didn't?

9 A Did not.

10 Q Okay.

11 Now, is the GenFlex --

12 A They had the part-number on the package that it came
13 in, but they didn't have a part-number on the boot.

14 Q Okay.

15 Were the GenFlex pipe boots 13-inch and 9-inch --
16 respectively -- in diameter base?

17 A The EPDM pipe boots were 13 inch on the larger of the
18 two.

19 The smaller one, I can't remember.

20 Q Now, do you have any contact with Maple Mold?

21 A Who?

22 Q Maple Molding in Rochester, Michigan?

23 A No.

24 Q You have never contacted anybody there?

25 A Mm-mm.

1 Nope.

2 Q Are you aware that they made tools for Alpha Systems?

3 A I'm aware that they make tools, but I don't know that
4 they made this tool (Indicating).

5 Q Okay.

6 Can you name for me the companies that make pipe
7 boots besides GAF, Firestone, Johns-Manville, and --

8 A That make pipe boots?

9 Q Yeah. That made them.

10 Or sell them. "Make" or "sell"?

11 A Those are two different things.

12 MR. TERENCE J. LINN: Could we get a clear
13 question here.

14 BY MR. DILLIS V. ALLEN:

15 Q Yeah.

16 I want you to identify the companies that make or
17 sell pipe boots that you're aware of?

18 A That should be split into two different questions.

19 Q Well, you can split them up and answer them, "making"
20 first, and then "selling", second.

21 A Okay.

22 Making pipe boots:

23 Portals Plus, Alpha Systems, is making pipe boots.

24 THE WITNESS: That I know for sure. Or do I
25 speculate here?

1 BY MR. DILLIS V. ALLEN:

2 Q You can speculate a little bit. It doesn't -- you
3 know?

4 A I believe --

5 Q If you're speculating, just tell me you're speculating.

6 A I'm speculating that Firestone is making their own.

7 I'm speculating that GAF is making their's.

8 Those are all speculations.

9 Q That's okay.

10 And, what about "selling"?

11 A As far as other People's that have made pipe boots,
12 there's that Company -- I can't remember the name of
13 them -- in Mentor, Ohio.

14 There is a Company in Stryker, Ohio, that has made
15 pipe boots.

16 I'm sure there are more.

17 Q Okay.

18 But, those are subcontractors?

19 They don't market them, right?

20 A I don't know.

21 I can't answer that.

22 Q Okay.

23 That's all right.

24 And, what about the companies that are Marketing
25 and selling pipe boots?

- 1 A That would be GAF, Johns-Manville, Firestone, Carlisle.
- 2 Q "Carlisle"?
- 3 A They may be making their own.
- 4 Pipe boots of -- we're talking about anybody who
- 5 is selling pipe boots.
- 6 Right?
- 7 Q Right.
- 8 A Mule-Hide.
- 9 Q What's that?
- 10 A "Mule-Hide."
- 11 Q How do you spell that?
- 12 A M-U-L-E-H-I-D-E.
- 13 Versico.
- 14 Q How do you spell that?
- 15 A V-E-R-S-I-C-O.
- 16 They're the old Good Year that got bought by
- 17 Carlisle.
- 18 That's kind of the "GenFlex" for Carlisle.
- 19 Who am I missing?
- 20 (PAUSE IN THE PROCEEDINGS.)
- 21 THE WITNESS:
- 22 A Then there's DOW.
- 23 BY MR. DILLIS V. ALLEN:
- 24 Q DOW/Corning?
- 25 A Not "Corning."

1 DOW. They just bought JP Stevens.

2 Q Dow Chemical?

3 A DOW.

4 Just put "DOW" down.

5 Because I doubt if it's the chemical company.

6 Because they just bought JP Stevens.

7 Then there is Dura-Last.

8 Q How do you spell that?

9 A D-U-R-A-L-A-S-T.

10 God. I can't remember the name.

11 They're up in Boston. It'll come back to me in a
12 little bit.

13 (PAUSE IN THE PROCEEDINGS.)

14 THE WITNESS: Sarnafil.

15 BY MR. DILLIS V. ALLEN:

16 Q How do you spell that?

17 A S-A-R-N-I-F-I-L.

18 It might be S-R-N-A-F-I-L.

19 I think that's right, though.

20 "I." I think it's has a "I."

21 Q S-R-N-I- -- I-F-I-L?

22 A I believe that's right.

23 It could be an "A" instead of the "I."

24 But, I think I was right the first time. I think
25 it's "A."

1 Do you want more?

2 Q Sure.

3 A There's the Company in Wooster, Ohio. That's Siemens.

4 Q S E I...?

5 A S-E-I-M-A-N-S.

6 Now, do you want all the ones that go with
7 shingles, too?

8 Q Shingles?

9 What do you mean "shingles"?

10 A You know, pipe boots go on shingle roofs.

11 How far do you want to go with this?

12 I mean it's a huge question.

13 I mean -- seriously -- this is a huge question.

14 Q Well, something that -- we're talking about something
15 that's similar to this (Indicating)?

16 MR. TERENCE J. LINN: Well --

17 MR. DILLIS V. ALLEN: Not a flashing product.

18 THE WITNESS:

19 A Well, most of those have something similar .

20 Sarnafil may not, then.

21 Siemens may not.

22 The rest all of them pretty much have something
23 like that, yeah.

24 BY MR. DILLIS V. ALLEN:

25 Q Okay.

1 And, --

2 A But, they may have something that looks like that.

3 I haven't looked through their stuff in a long
4 time.

5 MR. TERENCE J. LINN: Do you mean Siemens and
6 Sarnafil?

7 THE WITNESS: Yes.

8 But, all those guys have a pipe boot of some
9 sort.

10 BY MR. DILLIS V. ALLEN:

11 Q Well, --

12 A Sorry.

13 I guess I wasn't clear with the question.

14 Q That's okay.

15 (PAUSE IN THE PROCEEDINGS.)

16 BY MR. DILLIS V. ALLEN:

17 Q I want you to sketch for me the pipe boots that are
18 made by these companies that you... --

19 A I don't know the exact dimensions of --

20 Q I don't care about the dimensions. Just its shape.

21 MR. TERENCE J. LINN: Okay.

22 I want to note for the record, Mr. Hubbard is
23 left-handed. He's had rotator cuff surgery and
24 his left arm is in a sling.

25 He took it out of the sling and spent -- took

1 him quit a bit of time to make the one sketch of
2 the one drawing.

3 To the extent you can do this -- I don't know
4 how many pipe boots you're looking for drawings
5 on.

6 If we're going to have him turn out a
7 printer's press full of all these drawings, is
8 there a possibility of doing it in a different way
9 other than him having to draw with that bad arm?

10 MR. DILLIS V. ALLEN: Okay.

11 THE WITNESS: How many are you looking for?

12 Just the people who make them?

13 That I had in there that make them?

14 BY MR. DILLIS V. ALLEN:

15 Q No-no-no.

16 I want --

17 A All the people who sell them?

18 Q Let me ask another question first.

19 And, then, maybe I can even draw it for you, if
20 you're having a problem drawing them.

21 But, do you know which one of these companies that
22 buys pipe boots from Portals Plus?

23 A I don't.

24 Q You don't?

25 A Nope.

1 Q Either the ones that make them, and that includes
2 Firestone and GAF?

3 A Whether they buy pipe boots from Portals Plus?

4 Q Yeah.

5 A I have no idea.

6 I haven't been a part of those companies to know
7 who they purchase from.

8 Q But, didn't you testify that GenFlex bought pipe boots
9 from Portals Plus?

10 A Yes, I did.

11 Q But, you don't know what happened after Firestone
12 bought them out?

13 A That's correct.

14 Q Is that your position?

15 A Yes.

16 I have no idea what happened after Firestone
17 bought them.

18 Q Okay.

19 But, let me just --

20 MR. DILLIS V. ALLEN: Mr. Linn is actually
21 correct. I don't want to drag this out. I should
22 be abbreviating it.

23 BY MR. DILLIS V. ALLEN:

24 Q But, can you identified which one of these companies
25 make a pipe boot that looks like Exhibit 1 and 2 here

1 (Indicating)?

2 A Which ones are Exhibits 1 and 2?

3 Q Yeah?

4 A Which one of those companies makes a pipe boots that
5 looks like that?

6 Q Or sell them?

7 Makes or sells?

8 A Obviously Firestone.

9 Q Right?

10 A I believe Carlisle.

11 Q Carlisle does?

12 A Mm-mm.

13 The rest of the them -- I mean, it's easy to see
14 who makes these styles. Just go look on the Web-site.

15 I mean -- honestly -- I don't know if anybody has
16 changed their design or not.

17 But, you can just go to their Web-sites and see
18 what they're using.

19 Q Well, I'm asking from your knowledge?

20 A From my knowledge, probably most of them use something
21 like this (Indicating).

22 Q And, you don't know whether these companies that make
23 or sell pipe boots that look like this buy them from
24 Portals Plus?

25 A I do not.

1 I haven't done any purchasing for them so I
2 wouldn't know that.

3 Q That's okay.

4 A Again, to verify that we can just go online and see who
5 has them or who doesn't, something like that.

6 Q Yeah.

7 Well, I'm just asking about your knowledge.

8 Not what is online.

9 Okay.

10 Now, "Tim Larson", did you know him?

11 A Oh, yeah.

12 Q When did he work here?

13 A He started before I did.

14 I don't know when he started.

15 And, he left, I think, sometime in 2007, I
16 believe.

17 Again, I don't know exactly when in 2007, but some
18 time in 2007.

19 Q And, do you know where he worked prior to coming to --

20 A He worked at GAF.

21 And, before that he worked at Firestone.

22 Actually he's still at Firestone.

23 So...

24 Q He worked at GAF and Firestone?

25 A Mm-mm.

1 Q And do you know what he did for those two companies?

2 A At Firestone he was in Sales.

3 At GAF I believe he was in Marketing.

4 Q And did you ever talk with him about the design of pipe
5 boots?

6 A Never.

7 Q What did you talk with him about when you talked to
8 him?

9 A Mainly about the projects that I was working on, which
10 weren't pipe boots.

11 Q 61.

12 Membranes or something like that?

13 A Yeah.

14 Yeah. Some other projects that I was working on,
15 you know, unrelated.

16 Q Now, one of the -- you are the closest thing to an
17 Engineer at this Company.

18 And, one of the arguments that your Company is
19 making against the Company that I represent is that the
20 design in Exhibit 4 (Indicating) is "old hat" -- in
21 fact, it looks like a "hat", doesn't it?

22 A Mm-mm.

23 Q And, that's an important issue.

24 And, I'm going to -- I'm going to -- and you're
25 attorney has graciously supplied me with a lot of

1 Patents --

2 A Mm-mm.

3 Q -- where he showed -- or tries to show -- that Exhibit
4 4 is "old hat."

5 And I'm going to hand them to you.

6 A Okay.

7 Q And, you show me where in those Patents the "old hat"
8 exists?

9 MR. TERENCE J. LINN: Object as to the
10 characterization: A large number of Patents have
11 been produced do you for what purposes they were
12 produced, because these were requested.

13 Now, in terms of why I might like these
14 documents, or may use them in the future, that's a
15 different story than this production.

16 So, given that caveat, go ahead. You can
17 answer as best you can.

18 (PAUSE IN THE PROCEEDINGS.)

19 THE WITNESS: This one shows the ribs very
20 similar to this, as a matter of fact (Indicating).

21 And, it shows the rib where you hook the
22 clamp on.

23 BY MR. DILLIS V. ALLEN:

24 Q Would you tell us what the date in that Patent is?

25 A I have to get far enough away.

1 1983.

2 Q All right.

3 MR. TERENCE J. LINN: Just to make sure in
4 terms of dates here, what we're looking at here.

5 THE WITNESS: That's the date of issue.

6 MR. TERENCE J. LINN: Okay.

7 THE WITNESS: Date of file is '81, looks
8 like.

9 Yes. January 27 of '81.

10 This one looks very similar to the one that
11 was in the pile that you gave me.

12 BY MR. DILLIS V. ALLEN:

13 Q Give the Reporter the name of the Inventor and the
14 Patent Number?

15 A The name of the Inventor was "Houseman," on the first
16 one.

17 And it was 269, 454.

18 THE REPORTER: Thank you.

19 BY MR. TERENCE J. LINN:

20 Q That's a Design Patent.

21 A Mm-mm.

22 Q It say's "DS" before the number.

23 A Okay.

24 This one shows one that was very similar -- I
25 don't know if that's -- yeah, it is.

1 This shows one that was very similar to one that I
2 saw of the larger ones where it was squattier in the
3 papers you gave me from Portals.

4 I don't know the exact dimensions, yet, or
5 anything.

6 Q No.

7 We'll -- I want you to compare it to Exhibit 4
8 (Indicating)?

9 A Oh. Okay.

10 Q Not to anything else?

11 A Okay.

12 Patent number -- it's "Kaminski."

13 380, 110.

14 And, this one was a 1972 Patent. It shows a pipe
15 boot with the steps.

16 Q Well, let me ask you a question on that?

17 A Go ahead.

18 Q Does this Patent have either frusto-conical surfaces or
19 ribs?

20 A Explain frusto-conical surfaces?

21 Q Cone?

22 A Okay.

23 It does not have a cone.

24 And it does not have ribs, but does have steps.

25 Q Correct.

1 A Okay.

2 Patent number -- this one is from 1978.

3 "Resech." R-E-S-E-C-H.

4 And it's 4,211,423.

5 It shows steps and a clamp.

6 And, also, this one has actually a flange on it.

7 So, that might be a little different.

8 So, it looks like it has a clamp and flange.

9 Q Are these surfaces frusto-conical?

10 A No.

11 (PAUSE IN THE PROCEEDINGS.)

12 THE WITNESS: "Houseman." From -- they were
13 filed in April of 1985, Patent Number 4,664,390.

14 BY MR. DILLIS V. ALLEN:

15 Q That's okay.

16 You can ignore that one.

17 A Okay.

18 Do you want to ignore this one?

19 Q Yes.

20 Because of the dates.

21 MR. TERENCE J. LINN: Well, --

22 MR. DILLIS V. ALLEN: You can go over it,
23 Terry.

24 THE WITNESS: It's shows the frusto-conical.

25 MR. TERENCE J. LINN: I guess -- I don't

1 know.

2 He's trying to respond to your question and
3 midway through his response you changed the
4 question on him, is the problem I've got with
5 this.

6 So, I've got an objection.

7 If you want him to continue under different
8 criteria, tell him the criteria you want him to
9 use.

10 MR. DILLIS V. ALLEN: Well, I don't want to
11 sit here and fight.

12 MR. TERENCE J. LINN: No. I'm not trying to
13 start a fight. You told him to go through this
14 stack and find ones that he in some fashion
15 correlated here.

16 You didn't ask him to have any particular
17 date.

18 MR. DILLIS V. ALLEN: You're correct.

19 MR. TERENCE J. LINN: So, if you want to put
20 a date cut-off, you need to tell him that, is all.

21 MR. DILLIS V. ALLEN: I understand.

22 Let's see if there's an issue any further.

23 THE WITNESS: This one does show the conical,
24 by the way.

25 MR. DILLIS V. ALLEN: Okay.

1 (PAUSE IN THE PROCEEDINGS.)

2 MR. TERENCE J. LINN: Are you using a date
3 cut-off at this point or no?

4 THE WITNESS: I'm not.

5 MR. TERENCE J. LINN: Okay.

6 THE WITNESS: I'm just looking for stuff that
7 that's similar to that.

8 Do you want me to go through each one of
9 these?

10 MR. DILLIS V. ALLEN: Yeah.

11 THE WITNESS: And say whether it's similar?
12 Or do you want me to just look for ones that are
13 like that?

14 BY MR. DILLIS V. ALLEN:

15 Q Find me ones that look like that.

16 A Okay.

17 (PAUSE IN THE PROCEEDINGS.)

18 MR. TERENCE J. LINN: Again, just so I'm
19 sure: Are you looking for the product overall?
20 Or are you now confusing on this
21 frusto-conical?

22 THE WITNESS: I'm looking for the product is
23 all.

24 MR. TERENCE J. LINN: Okay.

25 (PAUSE IN THE PROCEEDINGS.)

1 THE WITNESS: Okay.

2 I don't know if they have one in there.

3 BY MR. DILLIS V. ALLEN:

4 Q Did you -- did you -- in that group of Patents -- find
5 a pipe boot with the construction shown in Exhibit 4
6 (Indicating)?

7 A No, I did not.

8 Q Thank you.

9 THE WITNESS: May I ask a question?

10 MR. DILLIS V. ALLEN: No.

11 MR. TERENCE J. LINN:

12 THE WITNESS: Okay.

13 MR. TERENCE J. LINN: You can ask me.

14 (WHEREUPON, A DISCUSSION WAS
15 HELD OUTSIDE OF HEARING OF
16 COUNSEL AND REPORTER.)

17 BY: MR. DILLIS V. ALLEN

18 Q I want to ask you a little more general question:

19 You testified with respect to Exhibit 9, that --

20 MR. TERENCE J. LINN: Could we get to 9 --

21 THE WITNESS: I need to get to 9, again.

22 MR. DILLIS V. ALLEN: Okay.

23 (PAUSE IN THE PROCEEDINGS.)

24 THE WITNESS: Okay.

25

1 BY MR. DILLIS V. ALLEN:

2 Q Now, you testified with respect to Exhibit 9 --

3 A Mm-mm.

4 Q -- that you thought there was certain functional
5 advantages of the step design which is the Alpha
6 Systems, the Firestone --

7 A Mm-mm.

8 Q -- and the Portals Plus design.

9 Over the frusto-conical configuration that was
10 surplus, other than the changes in the angles of the
11 present frusto-conical surface --

12 A Mm-mm.

13 Q -- and, so, my question is: Are you aware of any other
14 pipe boots designs besides the two designs that I have
15 depicted in Exhibit 9?

16 MR. TERENCE J. LINN: And I just object to
17 the extent that your sketch here with these
18 drawings numbered 18, 19 and 20.

19 I don't know to what extent they are actuary
20 -- representation of any product.

21 Go ahead and answer.

22 THE WITNESS: Yes.

23 BY: MR. DILLIS V. ALLEN

24 Q There are other designs?

25 A There's one right there (Indicating).

1 Q That one's --

2 A Number 5.

3 This is a true conical.

4 Q That's a true cone?

5 A Yes.

6 Q Okay.

7 But, other than Exhibit 4 and Exhibit 5, and
8 Exhibit 9, are you aware of any other pipe boots that
9 have a different shape to them?

10 A Yes.

11 Q Could you sketch it for me, please?

12 A Oh, I think so.

13 It would be more of a vacuum form type which I've
14 seen in the past. I don't know if anybody is still
15 using it.

16 It only had a couple steps up at the top
17 (Indicating).

18 I think they were closer together than what I'm
19 drawing (Indicating).

20 In fact, there might have been another one in
21 there.

22 I know this isn't a very good drawing, so bear
23 with me, please.

24 Q Take your time.

25 A I've seen some that look like this in the past.

1 And, I'm not sure if any of those are being used
2 any more or not.

3 But, those were vacuum-formed and not
4 injection/molded, or thermal-formed, one or the other.

5 Q So, if I'm looking at this correctly, these steps have
6 vertical/sidewalls on them?

7 A No.

8 They wouldn't have had vertical/sidewalls. They
9 would have sloped/sidewalls.

10 Q They were sloped?

11 A They definitely sloped.

12 But, instead of having this many steps, you went
13 up aways first, and then you had like -- there were
14 only like three or so at the top.

15 Q But, I'm not going to admit this. But would you --

16 A Thank God.

17 It's a terrible drawing.

18 (Laughter.)

19 BY MR. DILLIS V. ALLEN:

20 Q That's okay.

21 I can help you with that if I needed it.

22 I mean, would you in this large frusto-conical
23 step as a base -- would you cut it through the middle
24 to make it fit to a pipe?

25 A Uh-huh.

1 It was only used for these sizes (Indicating).

2 Q The top side is open?

3 A Yes. Yes.

4 That was only used for larger pipe.

5 MR. DILLIS V. ALLEN: We're not going to use
6 it.

7 That's okay.

8 Let me see if I can get finished with this so
9 that Mr. Linn can...

10 (PAUSE IN THE PROCEEDINGS.)

11 BY MR. DILLIS V. ALLEN:

12 Q Okay.

13 I don't know whether I asked you this. If I have
14 already, I apologize.

15 A Okay.

16 Q But, were you aware that Portals Plus made Exhibit 4
17 and 5 for Firestone?

18 A No.

19 Q You weren't aware of that?

20 A No.

21 Q Are you aware that they didn't?

22 A Nope.

23 I don't know who they got their's from.

24 MR. DILLIS V. ALLEN: Okay. That's all I
25 have.

1 MR. TERENCE J. LINN: Okay.

2 MR. DILLIS V. ALLEN: But could I ask off the
3 record...

4 (DISCUSSION HELD OFF THE
5 RECORD)

6 (FOLLOWING A BRIEF RECESS
7 THESE PROCEEDINGS WERE HAD:)

8 MR. TERENCE J. LINN: Back on the record
9 here.

10

11 **CROSS EXAMINATION**

12 BY MR. TERENCE J. LINN:

13 Q Mr. Hubbard, I'm going to try to just sort of go
14 through some of these things in something of an order,
15 or sequence to make sure we tie everything together and
16 clarify the questions you previously have been asked.

17 Just once again, what's your educational
18 background post/High-School?

19 A Chemistry from Michigan State University.

20 Q Okay.

21 And could you briefly run through your
22 work-history?

23 A Mm-mm.

24 After I got out of College I went to work for ADCO
25 Products.

1 Q What year was that?

2 A That was 1983.

3 Q Yes?

4 A And, I worked there on mainly adhesives and sealants
5 for the roofing industry.

6 But, I also compounded EPDM sheets and several
7 other things while I was there.

8 Q Okay.

9 Did you work on products for -- other than for the
10 roofing Industry?

11 A Yes.

12 Some other than the roofing industry.

13 Some for like automotive applications and things
14 like that.

15 Q Okay.

16 What was your next job after --

17 A After that I went to GenFlex Roofing Systems, in 1992,
18 June of 1992.

19 Q What was your -- what was your position there?

20 A I was the Technical Manager.

21 Q What were your job responsibilities while working
22 there?

23 A My job-responsibilities were New Products Development.
24 Codes.
25 System Design.

1 Warranty Management.

2 And Quality.

3 Q Okay.

4 How big, roughly, or in relation to other things,
5 was GenFlex roofing?

6 A GenFlex Roofing -- by the time they were bought by
7 Firestone, I think they were around 120, 125 million in
8 Sales.

9 Q What was their ranking in terms of other roofing
10 products companies in the Nation?

11 A As far as an EPDM, GenFlex was number three behind
12 Firestone and Carlisle.

13 And, TPO, GenFlex was number two.

14 And, it might have gotten overtaken the last year
15 by Firestone, but I think they were still Number two.

16 And, then, in PVC, number three.

17 Q What type of products fell within your zone of
18 responsibility at GenFlex?

19 A As far as system types or...?

20 Q Yeah.

21 System types, as well, as sub-systems that dealt
22 with --

23 A Pretty much all the products.

24 Q Okay.

25 Could you just give some general explanation of

1 the different types of products you were responsible
2 for?

3 A I was responsible for the compounding of the TPO
4 membrane, the PVC membrane, and EPDM Products.

5 Adhesives and sealants, any accessories that went
6 with the systems.

7 So, I was responsible for specifying all those
8 materials that would be used.

9 Q What type of products were you responsible for that
10 would be part of a system?

11 A Adhesives, Sealants, the Pipe boots.

12 Membrane, flashings, portable sealer, which is
13 urethane material -- two part urethane material.

14 Insulation, insulation adhesives, fasteners.

15 Q Could you give a general explanation of your
16 involvement in New Product Development for GenFlex?

17 A I was in charge of New Products Development for
18 GenFlex.

19 So, any New Products I was the person who worked
20 on them.

21 Q What type of products did you work on while at GenFlex,
22 New Products?

23 A New Products?

24 TPO. We introduced TPO in -- God, I think it was
25 1995 or so.

1 Other products. EPDM -- we looked at
2 manufacturing our own EPDM with a novel EPDM process.

3 Which I think we ended up with couple of different
4 Patents on that.

5 I worked on TPV's using those --

6 THE REPORTER: I'm sorry?

7 THE WITNESS: TPV's. Thermal plastic
8 vulcanize, for using those as actually adhesive
9 sealant system for EPDM.

10 Worked on different hot/melt systems.

11 Peel-and-stick TPO. That one we also got a
12 Patent on, Firestone owns now.

13 Double-weld for wind uplift.

14 So, that's a system where you weld on each
15 side of the fastener. You had to have a special
16 shoe.

17 So we designed the equipment to do that.

18 And, that got much higher wind uplift
19 ratings, which was a good thing for codes.

20 So, that's always a place where you can make
21 more money. When you get higher Codes, you can
22 make more money.

23 BY MR. TERENCE J. LINN:

24 Q When you're talking about "Codes," you're talking about
25 local ordinances and other State Codes?

1 A Yes.

2 And, like UL and FM type codes.

3 Q Okay.

4 Continue?

5 A Um --

6 Well...

7 Q Well, in your development of New Products work at
8 GenFlex were your activities confined to chemical
9 composition and material compositions?

10 A No.

11 Q What/all activities were you --

12 A Not only was I doing the compounding, but a lot of
13 times there was no equipment to do that -- what we were
14 developing, so you have to design the equipment, also,
15 to actually do the process.

16 Like in double-weld we actually had designed the
17 shoe, and the welder to actually perform the process.

18 And, EPDM, like I said, we designed the process to
19 cure without having to go to autoclaves.

20 In other words, you use a rubber press kit. It
21 was actually kind of a cute little project because you
22 rubber/press cure it, you put a skin on it, and then
23 you can finish it off with either IR lamps or
24 forced-air on them so you don't have to have a big
25 autoclave.

1 You can actually cure it in line. The problem
2 with curing without pressure is you have to use a
3 rotary press cure to keep pressure on them because EPDM
4 has a sensitive foam when you cure it. So you have to
5 have pressure in place.

6 Q Did you have any involvement in any New Product
7 Developments that were for products that would be used
8 with pipe boots?

9 A Not while I was at GenFlex.

10 But when I was at ADCO I did.

11 Q What did you do at ADCO that dealt with development of
12 products relating to pipe boots?

13 A That tape on the bottom of that, that's my Patent.

14 Q And, you're pointing to Defendant's Exhibit 4, the
15 Firestone pipe boot?

16 A And Exhibit 5.

17 Both of those have the tape on the bottom, what
18 they could call their "QuickSeam System."

19 And, that tape was one of my Patents from ADCO.

20 Q How is that -- just real generally, what does that tape
21 do? Or what's that for on pipe boots?

22 A It seals the pipe boot to the roof, to the roofing
23 membrane.

24 So, that's what makes it seam. It's also used for
25 seaming EPDM together.

1 Q Are you a member? Or were you a member of any
2 Associations relating to technical societies or
3 associations?

4 A Mm-mm.

5 ASTM. And I Chaired two different committees on
6 ASTM, both of those related to PVC.

7 I was also the Technical Chair for SPRI, the
8 Single-Ply Roofing Institute.

9 I was involved with the NIST-CRADA for adhesive
10 seams, which is the old NBS, you know, NIST.

11 THE REPORTER: Spelled?

12 THE WITNESS: C-R-A-D-A.

13 I can't remember what all the letters stand
14 for, but it a Government's Industry cooperation
15 where you go and do stuff for the Industry.

16 That was sponsored by NIST.

17 I've also been involved with stuff with NRC,
18 up in Canada. The National Research Counsel of
19 Canada, and different programs.

20 BY MR. TERENCE J. LINN:

21 Q Okay.

22 Have you had any familiarity exposure to Patents?

23 A Yes.

24 Q Could you explain that, please?

25 A A few.

1 Q When you say, "a few" what kind of number are you
2 talking about?

3 A Eighteen-ish.

4 Something like that.

5 Q 61.

6 A That's one of the Patents there on the front page of
7 that.

8 That's the peel-and-stick TPO, the guys pulling
9 the liner off.

10 MR. TERENCE J. LINN: Could you mark that as
11 Opposer's Exhibit 29, please.

12 (WHEREUPON, DOCUMENT WAS

13 MARKED FOR I.D. AS OPPOSERS

14 NO. 29 .)

15 BY MR. TERENCE J. LINN:

16 Q Okay.

17 Could you identify Opposers Exhibit 29, please?

18 A Yeah.

19 This looks like GenFlex Website pages.

20 Q And you indicated that there is something on the front
21 page --

22 A Oh, yeah. The front page the guy is pulling off the
23 film for the peel-and-stick TPO and I got a Patent on
24 that. On the page 1.

25 Also showing it on page 2, in the lower left-hand

1 corner.

2 And, they're also showing it on page three, in the
3 middle, and on the top. Upper right and in the middle.

4 Q Okay.

5 A Looks like that one (Indicating).

6 And, it's also on page -- like 6 or 7.

7 5, maybe.

8 Q Okay.

9 A Five.

10 Q Okay.

11 Now, were there any other awards or recognition
12 that you received in the roofing Industry?

13 A Yeah.

14 Well, not even so much in the roofing Industry,
15 but with Siba I did a joint project with them on
16 Stabilization of PVC, which they wrote a bunch of
17 articles on, which I co-authored with Jerry Cappocchi
18 from Siba --

19 THE REPORTER: I'm sorry.

20 Jerry...?

21 THE WITNESS: Jerry Cappochi.

22 C-A-P-P-O-C-C-H-I.

23 There's two C's there, I think.

24 THE REPORTER: Thank you.

25

1 BY MR. TERENCE J. LINN:

2 Q What is "Siba"?

3 A "Siba" is a large Chemical Company that deals mostly in
4 our Industry. They do some color stuff, but mostly in
5 UV's and -- UV's stabilization and anti-oxidants.

6 Q Okay.

7 A Also, got award from -- what was that?

8 Nor- -- Northeastern Ohio Scientific award --
9 thing in Akron, for the peel-and-stick.

10 So, that was a pretty big-deal.

11 MR. TERENCE J. LINN: I'm going to show him
12 this collection of materials I produced to you
13 this morning?

14 MR. DILLIS V. ALLEN: Okay.

15 MR. TERENCE J. LINN: Mark 30.

16 **(WHEREUPON, DOCUMENT WAS**
17 **MARKED FOR I.D. AS OPPOSER**
18 **NO. 30.)**

19 BY MR. TERENCE J. LINN:

20 Q Was there any others -- before we go to Exhibit 30,
21 were any other awards you --

22 A Yeah.

23 The one I mentioned in the Northern -- Northern
24 Ohio. It was actually Nortech, the Nortech award,
25 which is a big award in that -- in Northern Ohio.

1 Mainly the rubber companies are all in that.

2 So we got that on the peel-and-stick.

3 MR. DILLIS V. ALLEN: I don't have a copy of
4 that Patent.

5 MR. TERENCE J. LINN: Here.

6 MR. DILLIS V. ALLEN: Okay.

7 What was the Exhibit Number on the Patent?

8 MR. TERENCE J. LINN: 30.

9 BY MR. TERENCE J. LINN:

10 Q I have placed before you what's been marked as
11 Opposer's Exhibit 30. Could you go through that and
12 identify it, please?

13 A Oh, sure.

14 This one is the peel-and-stick patent.

15 Q Could you tell what it is, please?

16 A It is a TPO membrane. Or actually it could be a TPO,
17 PVC any roofing membrane with an adhesive layer and a
18 release liner.

19 Q Okay.

20 For starters before we get into anything in
21 particular, could you just leaf through all the
22 different pages and then say what this collection of
23 materials are that make up Exhibit 30?

24 A Okay (Indicating).

25 I forgot about that one (Indicating).

1 (PAUSE IN THE PROCEEDINGS.)

2 THE WITNESS: These are all Patents that I
3 have been involved in.

4 BY MR. TERENCE J. LINN:

5 Q Are you the named/Inventor or a named/inventor on all
6 those Patents?

7 A Yes.

8 Q In looking through these I note, for instance, the
9 second patent in Exhibit 30, is that a patent directed
10 to a piece of mechanical equipment?

11 A Yes.

12 Q Are there other Patents directed to mechanical
13 equipment that you're the inventor on?

14 A Yes.

15 Several. This one is -- well, we are actually
16 applying the hot melt through an auger and machine much
17 like a hot-air welder.

18 Q And, that one was 6,394,166?

19 A Mm-mm.

20 And even some of these others with the fastener --
21 you know, if you're looking for an Engineering function
22 that's also, there --

23 Q Say that again?

24 A Even Patents like 6,238,502, is a Patent that was an
25 Engineering design mainly for codes.

1 So, it's an Engineering design. Even though it's
2 not a piece of equipment, it's the way you would
3 Engineer the roof deck, or the roof system to get
4 higher wind uplift codes.

5 Q When you were at the -- GenFlex, was the Product
6 Development or development of new products confined
7 solely to Engineers?

8 A No.

9 Q What all types of people would work on development of
10 new products for the GenFlex Company?

11 A It would be mainly me, the Chemist, and then some --
12 possibly some Engineers, and mainly -- or some other
13 Chemists.

14 But, that -- they would have to be from like
15 OmNova. Because we didn't any other Chemist at
16 GenFlex.

17 Q Now, I think you were asked a lot of questions about
18 Firestone and Firestone products, and that company
19 getting bought -- GenFlex getting bought by Firestone,
20 and you worked there for a short while before going to
21 the next job.

22 Do you recall all that?

23 A Yes.

24 Q Do you have familiarity with Firestone and it's
25 products in general?

1 A In general, yeah.

2 The products.

3 Q Okay.

4 I'm going to --

5 MR. TERENCE J. LINN: This something that I
6 produced to you this morning (Indicating).

7 (WHEREUPON, DOCUMENT WAS
8 MARKED FOR I.D. AS OPPOSERS
9 EXHIBIT NO. 31.)

10 BY MR. TERENCE J. LINN:

11 Q I'm placing before you what's been marked as Opposer's
12 Exhibit 31.

13 Can you identify that, please?

14 A Yes.

15 That's a pipe boot, or what they call a "EPDM pipe
16 flashing."

17 Q Can you flip through it and see what else is in there?

18 A (Indicating).

19 QuickSeam version which is the taped, you know,
20 exactly like that (Indicating), Exhibit 4 where it's
21 taped, got tape on the bottom.

22 And, then, this is their detailed drawing. The
23 third page, MM-11, is detail number MM-11.

24 That's the detailed drawing of how a guy would
25 install it.

1 And, then, there's the UltraPly TPO, QuickSeam
2 Pipe Flashing.

3 And, then, the detail of how that's applied in the
4 field.

5 Q Just generally, whose Company's products are shown in
6 this particular Exhibit 31? Give it a general
7 identification overall?

8 A Firestone's.

9 Q Okay.

10 And, are they pipe boot related products?

11 A Yes.

12 Q Okay.

13 Do you know who --

14 MR. DILLIS V. ALLEN: I'm going to object. I
15 have to object to that, Terry.

16 He's testified that he doesn't know whether or not
17 the Firestone pipe boots are made by Firestone or some
18 other Company.

19 THE WITNESS: Can I clarify that this is what
20 they're selling, Firestone is selling.

21 MR. DILLIS V. ALLEN: Well, I understand.
22 I'm talking about the "making."

23 THE WITNESS: Okay.

24 I wasn't asked that.

25

1 BY MR. TERENCE J. LINN:

2 Q Do you know where these actual print-outs came from?

3 A Yeah. Off the Website.

4 Q Who made them?

5 A I did.

6 Q Okay.

7 A I printed them.

8 Q Now, turning to the third page of Exhibit 31, there's a
9 drawing there and it has production number "572" on the
10 bottom.

11 And, again, could you just explain what is shown
12 there?

13 A This is the detail drawing showing pipe boots being
14 installed over a pipe.

15 Okay?

16 And it shows the different things that would have
17 to be done, different steps that would have to be done.

18 It's also in here has different notes that you
19 have to make sure that you put down or else the guy
20 wouldn't recognize it.

21 Q When you say "the guy" -- who's that?

22 A The applicator, the contractor.

23 Q Who's doing the installation?

24 A Who is doing the installation.

25 Q Okay.

1 Number 3, under "notes" in the upper right/corner,
2 item number 3, could you read that and then tell us
3 what that means?

4 A "Pre-molded QuickSeam pipe flashing may be cut to
5 height but no lower than reinforcing ring. No wrinkles
6 or folds under clamping ring."

7 Q Okay.

8 Now, what does that refer to when it talks about
9 "cutting no lower than the reinforcing ring"?

10 A That's to keep the -- you want to cut above that so you
11 keep the clamp on this side of the bead.

12 Q Now you're referring to one of the physical exhibits?

13 A Exhibit 4 (Indicating).

14 And when you cut you want to cut above the ring so
15 the ring will be intact and the clamp goes under the
16 ring (Indicating).

17 Q Okay.

18 And what is in the -- parentheses -- item number
19 three it says, "No wrinkles or folds under clamping
20 ring."

21 Could you tell us what that refers to?

22 A That refers to cutting the size too big.

23 MR. DILLIS V. ALLEN: But, I'm going to
24 object to this because you're asking him to
25 explain what a Firestone document means when

1 there's no foundation for it.

2 Did he write these instructions?

3 I mean, if you want to find out what these
4 instructions mean you have got to go out and find
5 the guy that wrote them.

6 And this gentleman did not write these
7 instructions.

8 THE WITNESS: I didn't write their's. But
9 I've written them very similar to it.

10 BY MR. TERENCE J. LINN:

11 Q Okay.

12 Go ahead and continue with your answer.

13 A Okay.

14 If you -- if the pipe -- this ring does not fit
15 snugly on the pipe, and let's say you cut it the one
16 below it, you're going to have puckers and wrinkles
17 which is going to be a place that's going to leak over
18 time.

19 So, that's what that statements means.

20 So if you cut down too low, to where it's too
21 sloppy, you're going end up having a wrinkle or a fold
22 where the clamp is and that would be a place where
23 water can enter the system.

24 Q Okay.

25 (PAUSE IN THE PROCEEDINGS.)

1 MR. TERENCE J. LINN: Okay.

2 (WHEREUPON, PHOTOGRAPHS WERE
3 MARKED FOR I.D. AS OPPOSERS'
4 NO. 32 and 33.)

5 MR. TERENCE J. LINN: Okay.

6 Mark these.

7 (WHEREUPON, PHOTOGRAPHS WERE
8 MARKED FOR I.D. AS OPPOSERS'
9 NO. 34 and 35.)

10 MR. DILLIS V. ALLEN: 34 and 35.

11 MR. TERENCE J. LINN: Correct.

12 MR. DILLIS V. ALLEN: These are different.

13 MR. TERENCE J. LINN: That's right. It's
14 just different units.

15 MR. DILLIS V. ALLEN: Okay. Do you have
16 extras of these?

17 MR. TERENCE J. LINN: No. We'll have to make
18 copies of them.

19 MR. DILLIS V. ALLEN: Okay.

20 (WHEREUPON, PHOTOGRAPHS WERE
21 MARKED FOR I.D. AS OPPOSERS'
22 NO. 36, 37, 38.)

23 MR. DILLIS V. ALLEN: The witness knows what
24 my question is.

25 MR. TERENCE J. LINN: He will be able to

1 answer it.

2 MR. DILLIS V. ALLEN: I want to go home.

3 BY MR. TERENCE J. LINN:

4 Q I'm placing before you what's been marked as Opposer's
5 Exhibit 32 and 33.

6 Could you identify those, please?

7 A Yeah. Those are pipe boots with the clamping ring on a
8 step.

9 Q And, what particular pipe boots is shown in Exhibit 32
10 and 33?

11 A The Firestone boot.

12 Q Is that --

13 A Exhibit 4, Exhibit Number 4.

14 Q Now, there's some hand holding a clamp next to the pipe
15 boot of Exhibit 4.

16 Do you know who's hands those are?

17 A That's mine.

18 Q And does Exhibit 32 and 33 show a fairly accurate
19 comparison of the dimension of the clamp relative to
20 the pipe boot?

21 A Yes, it does.

22 Q Okay.

23 Is there -- in your mind -- a significant amount
24 of space between the -- I'm sorry. Bad question.

25 In your mind is there a significant amount of --

1 more space between the different steps of the pipe boot
2 of Exhibit 4, than is taken up by the clamp
3 (Indicating)?

4 A The only steps that has, that would be the first step,
5 which can't be used anyway.

6 Q Okay.

7 I'm placing before you what's been marked as
8 Opposer's Exhibit 34 and 35.

9 Can you identify what's in those photographs?

10 A You know, it's the Alpha pipe boot. I can't read them.

11 Is that number 1? Exhibit Number 1?

12 Q It's easier to see here.

13 It's 2.

14 A Oh. Exhibit Number 2.

15 And, a clamp up against the -- a clamping ring up
16 against the pipe boot.

17 Q Do Exhibits 34 and 35 accurately represent the relative
18 dimensions of the clamp relative to the pipe boot?

19 A Yes.

20 Q I'm placing before you what's been marked as Opposer's
21 Exhibit 36.

22 Can you identify that, please?

23 A Yes.

24 That's Exhibit 3. And it's the smallest pipe boot
25 with the clamping ring held up against it.

1 Q 61.

2 Does Exhibit 36 accurately represent the relative
3 dimensions of the clamp used with the pipe boot as
4 compared to the dimensions of the pipe boot itself?

5 A Yes.

6 Q And whose hand is in Exhibit 36?

7 A That's mine.

8 Q 61.

9 I'm placing before you what's been marked at
10 Opposer's Exhibit 37.

11 Can you identify that for us?

12 A Yes.

13 Large pipe boot and a small pipe boot.

14 Q And, which pipe boot is on the left in that photograph,
15 Exhibit 37?

16 A Large step-down pipe boot, and the conical smaller one
17 is on the right/hand side.

18 Q Okay.

19 Are those both the Alpha Systems pipe boot of
20 Exhibit 2 and 3?

21 A Yes, they look like it.

22 Q Okay.

23 Now, I'm going to place before you what's been
24 marked as Opposer's Exhibit 38.

25 Can you identify that, please?

1 A Yes.

2 That's Firestone pipe boot, which is Exhibit 4,
3 with the clamping ring on the very first step.

4 Q And now could you --

5 A It's on the bottom.

6 Q You were asked a number of questions about the
7 propriety or what would occur if the clamp were placed
8 on that lower most step, and pipe boots were cut above
9 that rib.

10 Can you explain, using this photograph, Exhibit
11 38, that situation?

12 A If the cut -- if the pipe is so big that it needed to
13 be clamped further down the boot, towards the bottom
14 (Indicating), I doubt very highly you can pull the rib
15 over a pipe that size.

16 Because it would probably have to be somewhere
17 near half-an-inch wider in diameter because of the
18 conical shape of the slope of the cone.

19 If you cut it under the rib, the product would not
20 be allowed on the system.

21 It would be a punch-list on a warranty.

22 Q And why is that?

23 A Because it would be -- the area would be too short up
24 the pipe. And any water that flooded or backed up --
25 any kind of ponding would go over the top and would not

1 be allowed.

2 Q I'm going to place before you what has previously been
3 marked as Opposer's Exhibit 11?

4 A (Indicating).

5 Q And this is just for purposes of giving you some
6 materials to use in discussing pipe boots in general?

7 A Mm-mm.

8 Q Why don't you read what is shown there and I will
9 represent to you it is what in this proceeding the
10 applicant, Milcore, is contending to be its Trademark?

11 A Okay.

12 You want me to read it out-loud?

13 Q No. Just read it to yourself.

14 A Okay.

15 (PAUSE IN THE PROCEEDINGS.)

16 BY MR. TERENCE J. LINN:

17 Q Okay.

18 A Yes.

19 Q Now, the reason I'm giving you Exhibit 11, it's got
20 those various different parts numbered?

21 A Okay.

22 Q In little reference numbers like you would see on a
23 Patent?

24 A Mm-mm.

25 Q Are you familiar with the use of reference numerals in

1 Patents and Patent-Applications?

2 A Yes.

3 Q Okay.

4 With regards to -- let's use the Firestone boot
5 for starters, Exhibit 4.

6 Assuming that the overall shape, the relative size
7 of the pipe boot, is like that of Exhibit 4?

8 A Mm-mm.

9 Q Making reference to the different features that are
10 Numbered in Exhibit 11, I want to go through the
11 different parts and pieces of this pipe boot, assuming
12 that the shape or structure shown in Exhibit 11 is
13 actually got the shape of Exhibit 4.

14 Does that make sense?

15 A What was the question again?

16 Q We're going to go through the parts and pieces
17 discussed in Exhibit 11.

18 Assuming that the overall pipe boot has the
19 overall shape shown in Exhibit 4?

20 A Okay.

21 Q Okay?

22 A Mm-mm.

23 Q Does the angled surfaces -- upwardly angled surfaces
24 that Mr. Allen refers to as "frusto-conical surfaces"
25 -- and those are numbered 10 and...?

1 A Fourteen.

2 Q (Continuing) -- 14, do they perform any function or
3 benefit with regard to the pipe boot?

4 A The function and benefit would be that if it were a
5 straight cone it would be extremely tall without the
6 steps bringing it in.

7 So, basically it's carrying it from one area to
8 the next to get to the proper size of the pipe.

9 Q Okay.

10 A Which would be a standard sized pipe.

11 Q Now, having these surfaces 10 and 14 angled rather than
12 straight up and down, does that do anything for the
13 pipe boot or perform any function?

14 A Oh, yeah.

15 Because if it were straight up and down it would
16 be almost impossible to pull it down over the pipe.

17 You would have too much surface-area in contact.

18 Q Could you -- explain that more?

19 A Okay.

20 So having a slope you're only going to come in
21 contact with the diameter with the pipe in one area,
22 the highest point.

23 It makes it easy to pull it down over the pipe.

24 If you have a straight up and down surface, it
25 becomes very difficult to pull that down over a pipe.

1 Q Do the angled sides -- that are numbered 10 and 14 in
2 Exhibit 11 -- do those angled/surfaces provide any
3 benefit or function in the making of the pipe boot?

4 A It probably makes it somewhat easier to get it out of
5 the mold.

6 Q Do the --

7 A Uh --

8 Q Go ahead?

9 A Other than that, I can't think of anything else that it
10 would really help in the...

11 Q In terms of a pipe boot that has a rib, 11 -- ?

12 A Mm-mm.

13 Q -- do the angled sides, 10 and 14, do anything with
14 regard to making the pipe boot with ribs?

15 A I'm not sure I understand the question.

16 Q All right.

17 Well, I'll move on then.

18 A Okay.

19 Q In terms of this circular ring, 11 --

20 A Mm-mm.

21 Q -- that I believe Mr. Allen may have referred to as a
22 "semi-toroidal ring" at one point or another -- does
23 that ring or rib do anything, perform a function with
24 regards to the --

25 A That's the surface that would be cut to the dimension

1 of the pipe. And it is there to hold the clamp in
2 place, keep the clamp from sliding up over the surface.

3 Especially after aging because as these things age
4 they will lose -- especially an EPDM boot -- will lose
5 plasticizer, which is processing oil, and have a
6 tendency to shrink.

7 If you don't have the clamp underneath that rib,
8 you have a good chance of the pipe pulling out from
9 under it.

10 Q Okay.

11 Is there any function or benefit to using a
12 rounded or curved rib as opposed to a square or
13 triangular cross-section?

14 A I think it's easier for molding purposes to get out of
15 the mold.

16 (PAUSE IN THE PROCEEDINGS.)

17 BY MR. TERENCE J. LINN:

18 Q Exhibit 11, there's a -- I think surface 12 it's a
19 short annular nearly vertical frusto-conical surface?

20 Is that --

21 A Oh, that's a little step piece here.

22 Yeah.

23 That's where you put your knife to cut along -- if
24 you're cutting with a knife you'll use your knife to
25 cut along this edge. And that's what gives you the

1 rounded piece right below.

2 So should be the cut to get you to the right size
3 of the pipe.

4 Q And, in terms of these flat horizontal annular
5 surfaces, 13, do they provide any benefit or function
6 to the pipe?

7 A The top step here?

8 Q Yes.

9 A Yeah.

10 Sometimes they can actually be an interesting
11 thing to cut along that line and then pull it down.
12 You actually get a --

13 Q I'm sorry.

14 What "line" are you talking?

15 A This line here.

16 I've actually done that where you can cut along
17 where you have a pipe that's not quite the diameter of
18 this one.

19 In other words, it's --

20 MR. DILLIS V. ALLEN: Cut inside the step.

21 THE WITNESS: Inside the step only if the
22 diameter is little bit smaller than the ring.

23 If you have an odd shaped pipe.

24 Usually in a retro-fit roof.

25 And, then pull it down over and it will

1 actually slide up the pipe giving you a little
2 flange.

3 BY MR. TERENCE J. LINN:

4 Q In term of using a horizontal step, 13, as compared to
5 -- I think Mr. Allen showed you a drawing where he drew
6 just a flat angle up, you know, from one rib to the
7 next rib, is there any -- either benefit or function
8 provided by the step versus --

9 A Yeah.

10 The benefit there from the step is that it's
11 closer to the diameter of the area 14, which is this
12 area, which is inward based on 13, helps to keep the
13 clamp closer to the pipe.

14 Therefore it won't wrinkle or -- you know, the
15 wider that is the more gather you're going to get from
16 the clamp. It's going to try to gather causing a
17 possible wrinkle under the clamp.

18 BY MR. TERENCE J. LINN:

19 Q And would a wrinkle pose a problem?

20 A Oh, yeah. It could be where water could leak in.

21 Q Okay.

22 Are you familiar or have any experience with
23 problems or warranties relating to pipe boots in your
24 work?

25 A Yes.

1 Q 61.

2 And, where were you then working when you had
3 those --

4 A GenFlex.

5 Q Okay.

6 Now, looking at Exhibit 37, which is the big and
7 the smaller pipe boots of Alpha, side by side --

8 A Mm-mm.

9 Q -- using that as an example, can you just give just a
10 little bit more explanation when you talked about if
11 you just made the pipe boot the large pipe boot,
12 straight angled up, how or what it would do to the pipe
13 boot in terms of --

14 A Dimensionally --

15 Q -- or being too tall or --

16 A Yes.

17 Because if you make just a straight cone out of it
18 you're basing it on the bottom circle, which would in
19 order to keep this kind of slope on the line, like this
20 slope, so that your clamp will still sit flush or
21 fairly flush on the pipe.

22 Q You're pointing to the angle --

23 A Exhibit 5.

24 Q The small pipe boot?

25 A -- you would have to have extremely tall pipe boot to

1 keep, to maintain that same angle so that the clamp
2 sits flush.

3 Anything shorter than that you come to have a very
4 shallow angle, which will end up giving you a lot of
5 gathering from the clamp.

6 Q 61.

7 MR. TERENCE J. LINN: No further questions.

8 MR. DILLIS V. ALLEN: Oh, boy. I have to ask
9 a few questions and I had would like to go.

10

11 **REDIRECT EXAMINATION**

12 BY MR. DILLIS V. ALLEN:

13 Q You testified that the clamp height of the Alpha
14 Systems clamp compared to the Alpha Systems pipe boots
15 Exhibits 1 or 2, were not substantially different
16 between the line underneath the rib and the lower --
17 next lower step.

18 Did you testify to that?

19 A (No audible response).

20 Q You said not substantially different in height?

21 A Right.

22 Q That was your testimony?

23 A Okay.

24 I can't remember exactly what I said.

25 Q Well, that's what you testified to.

1 Now, I want to you quantify that in terms of --

2 A I wasn't sure it was the Alpha Systems boot or the
3 Firestone boot.

4 But, that's --

5 Q Well, I want you to quantify it in terms of inches, or
6 thousands of an inch?

7 A As far as what?

8 What do you want me to quantify?

9 Q Quantify the difference between the height of the clamp
10 and the line underneath the semi-circular rib, and the
11 lower most -- next lower horizontal step.

12 I want to you quantify the difference in those two
13 heights?

14 A Okay.

15 I would have to get something to measure with.

16 Q Well, wait a second.

17 You testified to that. Did you ever measure it?

18 A I'm not sure what I testified to.

19 You asked me a questioned about --

20 Q We could go back and read it --

21 A I would love to read it, because I don't know what boot
22 I was talking about.

23 MR. DILLIS V. ALLEN: Go back and read it.

24 (PAUSE IN THE PROCEEDINGS.)

25 THE WITNESS: Go ahead and explain to me what

1 I testified to again.

2 MR. DILLIS V. ALLEN: Take my word for it,
3 you did.

4 You testified --

5 THE WITNESS: Okay.

6 BY MR. DILLIS V. ALLEN:

7 Q Well, --

8 A I have got to know which boot I was talking about
9 though. Okay.

10 Q Well, doesn't make any difference. They are identical.

11 A I don't know about "identical."

12 But, yeah, okay.

13 Q Let's talk about the Alpha System.

14 This Alpha System's here (Indicating).

15 A Okay.

16 Q I'm talking about the height of this clamp that's shown
17 in the photographs that your counsel has produced?

18 A Okay.

19 Q And, the distance between underneath the semi-toroidal
20 ring, and the top of the next lower/most step?

21 A Okay.

22 Q You testified that there wasn't a substantial
23 difference between those two dimensions.

24 That's what you testified to?

25 MR. TERENCE J. LINN: Well, he testified --

1 whatever he testified to, you know -- it's on the
2 record.

3 If we can --

4 MR. DILLIS V. ALLEN: Well, yeah.

5 I have got a right to cross-examine him on
6 it.

7 MR. TERENCE J. LINN: I understand that. But
8 in terms of characterizing it --

9 BY MR. DILLIS V. ALLEN:

10 Q You used the word "substantial."

11 And he ascended to that word.

12 A What I -- I think where we're at is when I was looking
13 at the pictures.

14 And is that essentially -- now, correct me if I'm
15 wrong, essentially the dimension, this to that.

16 Q That's the spacing?

17 A Right.

18 Q Right. Now, okay.

19 You did testify that there wasn't a substantial
20 difference. I'm asking you in terms of
21 thousandths-of-an-inch what is the difference in height
22 between the clamp and the steps that I just defined in
23 Exhibit 1 and 2?

24 A I can't give that to you without measuring --

25 Q No.

1 You can't do that --

2 A I can't do that for you until I have a measuring
3 device.

4 Q Right.

5 And, my question is did you ever measure them, the
6 distance?

7 A I have not measured them, no.

8 Q Okay.

9 That's what I wanted.

10 A That's all you had to ask me. If I ever measured them?

11 No, I haven't.

12 Q All right.

13 Now, you also -- you also testified that you make
14 the cut-line when you're selecting the pipe size --

15 A Mm-mm.

16 Q -- just above the rib?

17 A Mm-mm.

18 Q And that the rib somehow guides the knife when you're
19 cutting?

20 A Mm-mm.

21 Q Okay.

22 Now, you've also testified that you don't know
23 what the durometer or hardness of these materials are?

24 A Not sitting here, no.

25 Q All right.

1 Now, let's assume that it's a Shore A-40.

2 A Okay.

3 Q Which is a very soft material?

4 A I agree.

5 Q And, you take a knife and go in there to cut.

6 Wouldn't you cut into the rib just as easily as
7 the little short wall above? If we had Shore A-40?

8 A Possibly.

9 Q Okay.

10 That's what I wanted you to say.

11 Now, you've also testified that --

12 A Well, I don't know whether the Shore makes a difference
13 there.

14 If a guy is not careful you can cut through
15 anything -- and throw it away.

16 Q Well, if a Shore D-50, it might provide a guide that's
17 hard as a rock.

18 A Also, provides a Shore-50 piece above it that's hard as
19 a rock and you're trying to cut through a rock.

20 MR. TERENCE J. LINN: Objection.

21 We're getting argumentative here. Let's have
22 a question and answer.

23 MR. DILLIS V. ALLEN: We'll pass this.

24 (PAUSE IN THE PROCEEDINGS.)

25

1 BY MR. DILLIS V. ALLEN:

2 Q You've also testified that in the Portals Plus,
3 Firestone design, that these -- the frusto-conical
4 surfaces, because you have the horizontal steps, have a
5 shorter draft angle on them, and hold the clamp better
6 that way?

7 A Mm-mm.

8 Q Is that correct?

9 A That's correct.

10 Q All right.

11 You've also testified that the clamp that the
12 semi-toroidal ring serves as a stop for the clamp?

13 A Well, semi-toroidal ring -- tell me where you're at.

14 Q It's right here in this one (Indicating)?

15 A Exactly.

16 Q Serves as a stop for the --

17 A Right.

18 Q You've also testified that the short wall above the
19 ring is where the knife is inserted and that the ring
20 serves as a guide for the knife?

21 A I'm not sure I ever used the word "guide."

22 But, yes.

23 Okay.

24 That's where you cut.

25 Q That's where you cut?

1 A That's where you cut.

2 I don't think I ever used the word "guide."

3 Q Okay.

4 Well, I'll stand corrected on that point.

5 So, what you're telling me --

6 A Mm-mm.

7 Q (Continuing) -- is that the Portals Plus design is a
8 super pipe boot design.

9 That's what you have been telling us today.

10 Is that accurate?

11 MR. TERENCE J. LINN: Objection as to
12 characterization. I don't believe he's ever
13 mentioned the Portals Plus design.

14 MR. DILLIS V. ALLEN: Well, Firestone/Portals
15 Plus design.

16 MR. TERENCE J. LINN: Objection.

17 I don't believe he's ever referenced that as
18 the Portals Plus --

19 MR. DILLIS V. ALLEN: The Firestone design,
20 Exhibit 4.

21 THE WITNESS: It's what now?

22 BY MR. DILLIS V. ALLEN:

23 Q Superior pipe boot design?

24 A I think it's a good pipe boot design, yes.

25 Q Is there one better?

1 A Not that I have in front of me right now.

2 Q Well, --

3 A Is there one designed better?

4 Q No. You testified that there's all kinds of
5 manufacturers or sellers of pipe boots?

6 A Mm-mm.

7 Q GAF?

8 A Yes.

9 Q Firestone?

10 Carlisle.

11 Mule-Hide.

12 Versco.

13 DOW.

14 Dura-Last.

15 And Sarnafil.

16 And Siemens.

17 Are any of those pipe boots better than the
18 Firestone design?

19 A Some of them would be different.

20 But, I'm not sure that they are any better. As
21 long as they perform the function they're supposed to
22 perform.

23 Q Well, that's not what I'm saying.

24 Are any of them a better overall pipe boot design
25 than Exhibit 4, Firestone?

1 A I don't know what you want to say.

2 What do you want me to say here?

3 Ask the question again.

4 Q Well, you have been asked -- wait a second, now.

5 You have been extolling the benefits of this pipe
6 boot design, one element after another?

7 A Yes.

8 Q And, I'm asking you:

9 Is any other pipe boot that you're aware of better
10 than these features that you have been extolling for
11 the last half-hour?

12 A The only other features that there could be is the
13 Sarnafil or fiber-type type.

14 Because these are reinforced fabricated, not like
15 this.

16 So, that's a different type of pipe boot
17 altogether.

18 This is a totally unreinforced pipe boot.

19 If you want to talk about a different type of pipe
20 boot --

21 Q Let's talk about "unreinforced."

22 A Okay.

23 If you want to talk about the "unreinforced,"
24 that's probably a pretty good design, yeah.

25 Q Okay.

1 Are you aware that Portals Plus --

2 A Probably should have Patented it.

3 Q Are you aware that Portals Plus made Exhibit 4?

4 A No. I'm not.

5 Q Okay.

6 A That's a Firestone boot.

7 Q Are you aware that Portals Plus made it for Firestone?

8 A No, I'm not.

9 Q All right.

10 A It's my understanding Firestone is making their own
11 right now.

12 (PAUSE IN THE PROCEEDINGS.)

13 MR. DILLIS V. ALLEN: Okay. That's all I
14 have.

15 MR. TERENCE J. LINN: No further questions.

16 THE REPORTER: Signature, counsel?

17 MR. TERENCE J. LINN: Please. He'll read and
18 sign.

19 (Discussion held off the
20 record.)

21 MR. TERENCE J. LINN: The Reporter -- and by
22 stipulation between counsel, the Reporter will
23 take the original Exhibits for purposes of
24 preparation of the transcript.

25 The original exhibits will be provided to the

1 attorney that created those exhibits, so the
2 original Defendants Exhibits will be provided to
3 Mr. Allen. The original Opposers exhibits will be
4 provided to me.

5 And, the Reporter will be making copies to
6 provide to the other counsel.

7 MR. DILLIS V. ALLEN: And, the Reporter is
8 going to make good copies of those photographs.
9 Right?

10 THE REPORTER: Yes.

11 MR. DILLIS V. ALLEN: We have agreed that the
12 physical samples, Exhibits 1 through 5, will be
13 given to the Court Reporter for photographing.

14 And, that they will be shipped to Mr. Linn's
15 office in the Grand Rapids for safe-keeping
16 instead of bringing them back here.

17 MR. TERENCE J. LINN: I would agree with
18 that.

19 (WHEREUPON, the deposition was
20 concluded at 4:27 p.m.)
21
22
23
24
25

1 STATE OF INDIANA)
2) SS:
3 COUNTY OF ST. JOSEPH)
4

5 C E R T I F I C A T E

6 I, CHARLES A. OLMSTED, Certified Court Reporter,
7 and Certified by the State of Indiana and Federally
8 Commissioned, and not disqualified as specified in Rule 28
9 of the Federal Rules of Civil Procedure, do hereby certify
10 that heretofore, to-wit, on Thursday, November 13, 2008,
11 came before me, one, MICHAEL JOHN HUBBARD, called as a
12 witness by the Defendant, pursuant to Notice and agreement
13 and pursuant to Federal Rule of Civil Procedure 30.

14 I further certify that the said witness was by
15 me, being a duly qualified officer under the State of
16 Indiana and Federally Commissioned, first duly sworn to
17 testify to the truth, the whole truth and nothing but the
18 truth in the cause aforesaid.

19 That the testimony then given by him was by me
20 reduced to writing in the presence of said witness by
21 means of shorthand, and transcribed by means of a computer,
22 and that the foregoing is a true and correct transcript of
23 the testimony so given by him, as aforesaid.

24 And I further certify that after this deposition
25 had been transcribed in typewritten form, it was presented

1 to the witness for reading and signing.

2 I further certify that there were present as
3 counsel at the taking of this deposition Terence J. Linn,
4 Esq., of the law firm Van Dyke, Gardner, Linn & Burkhardt,
5 LLP, 2851 Charlevoix Drive SE, Suite 207 Grand Rapids,
6 Michigan 49588-8695, appearing on behalf of the
7 Plaintiff/Opposer, and Dillis V. Allen, Esq., 104 South
8 Roselle Road, Suite 101, Schaumburg, Illinois 60193,
9 appearing on behalf of the Defendant.

10 I further certify that I am not counsel for nor
11 in any way related to any of the parties hereto.

12 In testimony whereof, I have set my hand this
13 20th day of November, A.D., 2008.

14 _____
15 Charles A. Olmsted, CSR, RPR, CM,
16 Notary Public #528740
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ERRATA SHEET

PAGE	LINE NO.	CHANGE	REASON
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Olmsted & Associates, Ltd
402 E. Mishawaka Ave.,
Mishawaka, Indiana 46545
(800) 439-4478
Olmsted@Olmstedreporting.com

SIGNATURE PAGE

OF

MICHAEL JOHN HUBBARD

I hereby acknowledge that I have read the foregoing transcript, dated November 13, 2008, and that the same is a true and correct transcription of the answers given by me to the questions propounded, except for the changes, if any, noted on the attached errata sheet.

SIGNATURE _____

DATE _____

STATE OF _____)

)

COUNTY OF _____)

SUBSCRIBED AND SWORN TO ME

THIS _____ DAY OF _____, 2008.

State of _____

County of _____

Notary Public _____

My Commission Expires: _____